Title 74

PUBLIC ASSISTANCE

Chapters

Assistance and relief by counties: Chapter 36.39 RCW.

Assistance for parolees, work release, and discharged prisoners: RCW 9.95.310 through 9.95.370.

Child abuse or neglect, reports by practitioners of healing arts: Chapter 26.44 RCW.

Domestic violence prevention: Chapter 26.50 RCW.

Jurisdiction over Indians as to public assistance: Chapter 37.12 RCW.

Low-income patients, malpractice insurance for retired physicians providing health care services: RCW 43.70.460.

Missing children clearinghouse and hotline: Chapter 13.60 RCW.

Chapter 74.04 RCW
GENERAL PROVISIONS—ADMINISTRATION

Sections

Collection agencies to collect public debts: RCW 19.16.500.

Identicards—Issuance to nondrivers and public assistance recipients: RCW 46.20.117.

74.04.004 Definitions—Fraud and abuse. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abuse" means any intentional use of public assistance benefits that constitutes a violation of any state statute or regulation relating to the use of public assistance benefits. This definition excludes medicaid and other medical programs as defined in chapter 74.09 RCW, and fraud and abuse committed by medical providers and recipients of medicaid and other medical program services.

(2) "Disclosable information" means public information that (a) is not exempt from disclosure under chapter 42.56 RCW; and (b) does not pertain to an ongoing investigation.

(3) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person.

(4) "Office" means the office of fraud and accountability.

(5) "Public assistance" or "public assistance programs" means public aid to persons in need including assistance grants, food assistance, work relief, disability lifeline benefits, temporary assistance for needy families, and, for purposes of this section, working connections child care subsidies. This definition excludes medicaid and other medical programs as defined in chapter 74.09 RCW, and fraud and abuse committed by medical providers and recipients of medicaid and other medical program services. [2011 1st sp.s. c 42 § 21.]

Finding—2011 1st sp.s. c 42: "The legislature finds that eliminating waste, fraud, and abuse of public assistance benefits should be a priority of the department of social and health services, and this can best be reflected in a newly organized, accountable, and proactive fraud unit directly under the secretary's authority with the resources necessary to combat fraud and to ensure the confidence of the public in the critical social safety net programs it funds." [2011 1st sp.s. c 42 § 20.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

74.04.005 Definitions—Eligibility. For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

(1) "Aged, blind, or disabled assistance program" means the program established under RCW 74.62.030.

(2) "Applicant" means any person who has made a request, or on behalf of whom a request has been made, to any county or local office for assistance.

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

(4) "County or local office" means the administrative office for one or more counties or designated service areas.

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

(6) "Director" means the director of the health care authority.

(7) "Essential needs and housing support program" means the program established in RCW 43.185C.220.

(8) "Federal aid assistance" means the specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid or in respect to payment by the state for public assistance rendered to any category of needy persons for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(9) "Income" means:

(a) All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and enjoyment by an applicant or recipient during the month of application or after applying for or receiving public assistance. The department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him or her to decrease his or her need for public assistance or to aid in rehabilitating him or her or his or her dependents, but such exemption shall not, unless otherwise provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance. In addition, for cash assistance the department may disregard income pursuant to RCW 74.08A.230 and 74.12.350.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(10) "Need" means the difference between the applicant's or recipient's standards of assistance for himself or herself and the dependent members of his or her family, as mea-

sured by the standards of the department, and value of all nonexempt resources and nonexempt income received by or available to the applicant or recipient and the dependent members of his or her family.

(11) "Public assistance" or "assistance" means public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, benefits under RCW 74.62.030 and 43.185C.220, and federal aid assistance.

(12) "Recipient" means any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(13) "Resource" means any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent. The department may by rule designate resources that an applicant may retain and not be ineligible for public assistance because of such resources. Exempt resources shall include, but are not limited to:

(a) A home that an applicant, recipient, or their dependents is living in, including the surrounding property;

(b) Household furnishings and personal effects;

(c) One motor vehicle, other than a motor home, used and useful having an equity value not to exceed ten thousand dollars;

(d) A motor vehicle necessary to transport a household member with a physical disability. This exclusion is limited to one vehicle per person with a physical disability;

(e) All other resources, including any excess of values exempted, not to exceed six thousand dollars or other limit as set by the department, to be consistent with limitations on resources and exemptions necessary for federal aid assistance;

(f) Applicants for or recipients of benefits under RCW 74.62.030 and 43.185C.220 shall have their eligibility based on resource limitations consistent with the temporary assistance for needy families program rules adopted by the department; and

(g) If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient or a dependent of the applicant or recipient; and (ii) the department may provide grant assistance for a period not to exceed nine months from the date the agreement is signed pursuant to this section to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property if:

(A) The applicant or recipient signs an agreement to repay the lesser of the amount of aid received or the net proceeds of such sale;

(B) If the owner of the excess property ceases to make good faith efforts to sell the property, the entire amount of assistance may become an overpayment and a debt due the state and may be recovered pursuant to RCW 43.20B.630;

(C) Applicants and recipients are advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good faith efforts to sell have ceased, prior to assessment of an overpayment under this section; and

(D) At the time assistance is authorized, the department files a lien without a sum certain on the specific property.

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

(15) "Standards of assistance" means the level of income required by an applicant or recipient to maintain a level of living specified by the department.

(16) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(17) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders, and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary. [2018 c 40 § 1. Prior: 2011 1st sp.s. c 36 § 8; 2011 1st sp.s. c 15 § 61; 2010 1st sp.s. c 8 § 4; 2003 1st sp.s. c 10 § 1; 2000 c 218 § 1; prior: 1998 c 80 § 1; 1998 c 79 § 6; prior: 1997 c 59 § 10; 1997 c 58 § 309; prior: 1992 c 165 § 1; 1992 c 136 § 1; 1991 sp.s. c 10 § 1; 1991 c 126 § 1; 1990 c 285 § 2; 1989 1st ex.s. c 9 § 816; prior: 1987 c 406 § 9; 1987 c 75 § 31; 1985 c 335 § 2; 1983 1st ex.s. c 41 § 36; 1981 2nd ex.s. c 10 § 5; 1981 1st ex.s. c 6 § 1; prior: 1981 c 8 § 1; prior: 1980 c 174 § 1; 1980 c 84 § 1; 1979 c 141 § 294; 1969 ex.s. c 173 § 1; 1965 ex.s. c 2 § 1; 1963 c 228 § 1; 1961 c 235 § 1; 1959 c 26 § 74.04.005; prior: (i) 1947 c 289 § 1; 1939 c 216 § 1; Rem. Supp. 1947 § 10007-101a. (ii) 1957 c 63 § 1; 1953 c 174 § 17; 1951 c 122 § 1; 1951 c 1 § 3 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 3; Rem. Supp. 1949 § 9998-33c.]

Effective date—2018 c 40: "This act takes effect February 1, 2019." [2018 c 40 § 3.]

Effective date—2011 1st sp.s. c 36 § 8: "Section 8 of this act takes effect November 1, 2011." [2011 1st sp.s. c 36 § 40.]

Alphabetization—2011 1st sp.s. c 36: "The code reviser shall alphabetize the subsections containing definitions in RCW 74.04.005." [2011 1st sp.s. c 36 § 35.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

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.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Findings—Purpose—1990 c 285: "(1) The legislature finds that each year less than five percent of pregnant teens relinquish their babies for adoption in Washington state. Nationally, fewer than eight percent of pregnant teens relinquish their babies for adoption.

(2) The legislature further finds that barriers such as lack of information about adoption, inability to voluntarily enter into adoption agreements, and current state public assistance policies act as disincentives to adoption.

(3) It is the purpose of this act to support adoption as an option for women with unintended pregnancies by removing barriers that act as disincentives to adoption." [1990 c 285 § 1.]

Consolidated standards of need: RCW 74.04.770.

Additional notes found at www.leg.wa.gov

74.04.00511 Limitations on "resource" and "income." For purposes of *RCW 74.04.005 (10) and (11), "resource" and "income" do not include educational assistance awarded under **the gaining independence for students with dependents program as defined in chapter 19, Laws of 2003 for recipients of temporary assistance for needy families. [2003 c 19 § 8.]

Reviser's note: *(1) RCW 74.04.005 was amended by 2010 1st sp.s. c 8 § 4, changing subsections (10) and (11) to subsections (11) and (12), respectively. RCW 74.04.005 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsections (11) and (12) to subsections (13) and (9), respectively.

**(2) The gaining independence for students with dependents program is codified in chapter 28B.133 RCW.

Finding—Intent—Short title—2003 c 19: See RCW 28B.133.005 and 28B.133.900.

74.04.0052 Teen applicants' living situation—Criteria—Presumption—Protective payee—Adoption referral. (1) The department shall determine, after consideration of all relevant factors and in consultation with the applicant, the most appropriate living situation for applicants under eighteen years of age, unmarried, and pregnant who are eligible for benefits under RCW 74.62.030 and 43.185C.220. An appropriate living situation shall include a place of residence that is maintained by the applicant's parents, parent, legal guardian, or other adult relative as their or his or her own home and that the department finds would provide an appropriate supportive living arrangement. It also includes a living situation maintained by an agency that is licensed under chapter 74.15 RCW that the department finds would provide an appropriate supportive living arrangement. Grant assistance shall not be provided under this chapter if the applicant does not reside in the most appropriate living situation, as determined by the department.

(2) A pregnant minor residing in the most appropriate living situation, as provided under subsection (1) of this section, is presumed to be unable to manage adequately the funds paid to the minor or on behalf of the dependent child or children and, unless the minor provides sufficient evidence to rebut the presumption, shall be subject to the protective payee requirements provided for under RCW 74.12.250 and 74.08.280.

(3) The department shall consider any statements or opinions by either parent of the unmarried minor parent or pregnant minor applicant as to an appropriate living situation for the minor, whether in the parental home or other situation. If the parents or a parent of the minor request, they or he or she shall be entitled to a hearing in juvenile court regarding designation of the parental home or other relative placement as the most appropriate living situation for the pregnant or parenting minor.

The department shall provide the parents or parent with the opportunity to make a showing that the parental home, or home of the other relative placement, is the most appropriate living situation. It shall be presumed in any administrative or judicial proceeding conducted under this subsection that the parental home or other relative placement requested by the parents or parent is the most appropriate living situation. This presumption is rebuttable.

(4) In cases in which the minor is unmarried and unemployed, the department shall, as part of the determination of the appropriate living situation, provide information about adoption including referral to community-based organizations providing counseling.

(5) For the purposes of this section, "most appropriate living situation" shall not include a living situation including an adult male who fathered the qualifying child and is found to meet the elements of rape of a child as set forth in RCW 9A.44.079. [2011 1st sp.s. c 36 § 18; 2010 1st sp.s. c 8 § 18; 1997 c 58 § 502; 1994 c 299 § 34.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Aid to families with dependent children: RCW 74.12.255.

Additional notes found at www.leg.wa.gov

74.04.006 Contract of sale of property—Availability as a resource or income—Establishment. The department may establish, by rule and regulation, the availability of a contract of sale of real or personal property as a resource or income as defined in RCW 74.04.005. [1973 1st ex.s. c 49 § 2.]

74.04.011 Secretary's authority—Personnel. The secretary of social and health services shall be the administrative head and appointing authority of the department of social and health services and he or she shall have the power to and shall employ such assistants and personnel as may be necessary for the general administration of the department: PROVIDED, That such employment is in accordance with the rules and regulations of the state merit system. The secretary shall through and by means of his or her assistants and personnel exercise such powers and perform such duties as may be prescribed by the public assistance laws of this state.

The authority vested in the secretary as appointing authority may be delegated by the secretary or his or her designee to any suitable employee of the department. [2013 c 23 § 192; 1979 c 141 § 295; 1969 ex.s. c 173 § 4; 1959 c 26 § 74.04.011. Prior: 1953 c 174 § 3. (i) 1937 c 111 § 3; RRS § 10785-2. (ii) 1937 c 111 § 5; RRS § 10785-4.]

State civil service law: Chapter 41.06 RCW.

74.04.012 Office of fraud and accountability. (1) There is established an office of fraud and accountability within the department for the purpose of detection, investigation, and prosecution of any act prohibited or declared to be unlawful in the public assistance programs administered by the department. The secretary will employ qualified supervisory, legal, and investigative personnel for the program. Program staff must be qualified by training and experience.

(2) The director of the office of fraud and accountability is the head of the office and is selected by the secretary and must demonstrate suitable capacity and experience in law enforcement management, public administration, and crimi-

nal investigations. The director of the office of fraud and accountability shall:

(a) Report directly to the secretary; and

(b) Ensure that each citizen complaint, employee complaint, law enforcement complaint, and agency referral is assessed and, when risk of fraud or abuse is present, is fully investigated, and is referred for prosecution or recovery when there is substantial evidence of wrongdoing.

(3) The office shall:

(a) Conduct independent and objective investigations into allegations of fraud and abuse, make appropriate referral to law enforcement when there is substantial evidence of criminal activity, and recover overpayment whenever possible and to the greatest possible degree;

(b) Recommend policies, procedures, and best practices designed to detect and prevent fraud and abuse, and to mitigate the risk for fraud and abuse and assure that public assistance benefits are being used for their statutorily stated goals;

(c) Analyze cost-effective, best practice alternatives to the current cash benefit delivery system consistent with federal law to ensure that benefits are being used for their intended purposes; and

(d) Use best practices to determine appropriate utilization and deployment of investigative resources, ensure that resources are deployed in a balanced and effective manner, and use all available methods to gather evidence necessary for proper investigation and successful prosecution.

(4) By December 31, 2011, the office shall report to the legislature on the development of the office, identification of any barriers to meeting the stated goals of the office, and recommendations for improvements to the system and laws related to the prevention, detection, and prosecution of fraud and abuse in public assistance programs. [2011 1st sp.s. c 42 § 22; 2008 c 74 § 3.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Finding—2008 c 74: See note following RCW 51.04.024.

74.04.014 Office of fraud and accountability—Authority—Confidentiality. (1) In carrying out the provisions of this chapter, the office of fraud and accountability shall have prompt access to all individuals, records, electronic data, reports, audits, reviews, documents, and other materials available to the department of revenue, department of labor and industries, department of children, youth, and families, employment security department, department of licensing, and any other government entity that can be used to help facilitate investigations of fraud or abuse as determined necessary by the director of the office of fraud and accountability.

(2) The investigator shall have access to all original child care records maintained by licensed and unlicensed child care providers with the consent of the provider or with a court order or valid search warrant.

(3) Information gathered by the department, the office, or the fraud ombuds shall be safeguarded and remain confidential as required by applicable state or federal law. Whenever information or assistance requested under subsection (1) or (2) of this section is, in the judgment of the director, unreasonably refused or not provided, the director of the office of fraud and accountability must report the circumstances to the secretary immediately. [2018 c 58 § 9; 2013 c 23 § 193; 2012 c 253 § 4; 2011 1st sp.s. c 42 § 24.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

Findings—Purpose—2012 c 253: See note following RCW 74.08.580.

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

74.04.015 Administration and disbursement of federal funds—Public assistance—Medical services programs. (1) The secretary of social and health services shall be the responsible state officer for the administration and disbursement of all funds, goods, commodities, and services, which may be received by the state in connection with programs of public assistance or services related directly or indirectly to assistance programs, and all other matters included in the federal social security act as amended, or any other federal act or as the same may be amended except as otherwise provided by law.

(2) The director shall be the responsible state officer for the administration and disbursement of funds that the state receives in connection with the medical services programs established under chapter 74.09 RCW, including the state children's health insurance program, Titles XIX and XXI of the social security act of 1935, as amended, and programs established under chapter 71.05, 71.24, and 71.34 RCW that are under the director's authority.

(3) The department and the authority, as appropriate, shall make such reports and render such accounting as may be required by federal law. [2018 c 201 § 2010; 2011 1st sp.s. c 15 § 62; 1981 1st ex.s. c 6 § 2; 1981 c 8 § 2; 1979 c 141 § 296; 1963 c 228 § 2; 1959 c 26 § 74.04.015. Prior: 1953 c 174 § 49; 1937 c 111 § 12; RRS § 10785-11.]

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

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.

Center for research and training in intellectual and developmental disabilities, assistant secretaries as advisory committee members: RCW 28B.20.412.

Additional notes found at www.leg.wa.gov

74.04.025 Bilingual services for non-English-speaking applicants and recipients—Bilingual personnel, when—Primary language pamphlets and written materials. (1) The department, the authority, and the office of administrative hearings shall ensure that bilingual services are provided to non-English-speaking applicants and recipients. The services shall be provided to the extent necessary to assure that non-English-speaking persons are not denied, or unable to obtain or maintain, services or benefits because of their inability to speak English.

(2) If the number of non-English-speaking applicants or recipients sharing the same language served by any community service office client contact job classification equals or exceeds fifty percent of the average caseload of a full-time position in such classification, the department shall, through attrition, employ bilingual personnel to serve such applicants or recipients.

(3) Regardless of the applicant or recipient caseload of any community service office, each community service office shall ensure that bilingual services required to supplement the community service office staff are provided through contracts with language access providers, local agencies, or other community resources.

(4) The department shall certify, authorize, and qualify language access providers as needed to maintain an adequate pool of providers such that residents can access state services. Except as needed to certify, authorize, or qualify bilingual personnel per subsection (2) of this section, the department will only offer spoken language interpreter testing in the following manner:

(a) To individuals speaking languages for which ten percent or more of the requests for interpreter services in the prior year for department employees and the health care authority on behalf of limited English-speaking applicants and recipients of public assistance that went unfilled through the procurement process in RCW 39.26.300;

(b) To spoken language interpreters who were decertified or deauthorized due to noncompliance with any continuing education requirements; and

(c) To current department certified or authorized spoken language interpreters seeking to gain additional certification or authorization.

(5) The department shall require compliance with RCW 41.56.113(2) through its contracts with third parties.

(6) Initial client contact materials shall inform clients in all primary languages of the availability of interpretation services for non-English-speaking persons. Basic informational pamphlets shall be translated into all primary languages.

(7) To the extent all written communications directed to applicants or recipients are not in the primary language of the applicant or recipient, the department and the office of administrative hearings shall include with the written communication a notice in all primary languages of applicants or recipients describing the significance of the communication and specifically how the applicants or recipients may receive assistance in understanding, and responding to if necessary, the written communication. The department shall assure that sufficient resources are available to assist applicants and recipients in a timely fashion with understanding, responding to, and complying with the requirements of all such written communications.

(8) As used in this section:

(a) "Language access provider" means any independent contractor who provides spoken language interpreter services for state agencies, injured worker, or crime victim appointments through the department of labor and industries, or medicaid enrollee appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or a state agency. "Language access provider" does not mean a manager or employee of a broker or a language access agency.

(b) "Primary languages" includes but is not limited to Spanish, Vietnamese, Cambodian, Laotian, and Chinese. [2018 c 253 § 2; 2011 1st sp.s. c 15 § 63; 2010 c 296 § 7; 1998 c 245 § 143; 1983 1st ex.s. c 41 § 33.]

Intent—2018 c 253: "It is the intent of the legislature to centralize and consolidate the procurement of spoken language interpreter services and expand the use of language access providers, thereby reducing administrative costs while protecting consumers. The legislature further intends to exclude interpreter services for sensory-impaired persons from the provisions of this act." [2018 c 253 § 1.]

Conflict with federal requirements—2018 c 253: "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. Nothing in this act may restrict an agency's ability to serve limited English proficient clients in a timely manner." [2018 c 253 § 9.]

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.

Conflict with federal requirements—2010 c 296: See note following RCW 41.56.510.

Additional notes found at www.leg.wa.gov

74.04.033 Notification of availability of basic health plan. The department shall notify any applicant for public assistance who resides in a local area served by the Washington basic health plan and is under sixty-five years of age of the availability of basic health care coverage to qualified enrollees in the Washington basic health plan under chapter 70.47 RCW, unless the Washington basic health plan administrator has notified the department of a closure of enrollment in the area. The department shall maintain a supply of Washington basic health plan enrollment application forms, which shall be provided in reasonably necessary quantities by the administrator, in each appropriate community service office for the use of persons wishing to apply for enrollment in the Washington basic health plan. [1987 1st ex.s. c 5 § 18.]

74.04.040 Public assistance a joint federal, state, and county function—Notice required. The care, support, and relief of needy persons is hereby declared to be a joint federal, state, and county function. County offices are charged with the responsibility for the administration of public assistance within the respective county or counties or parts thereof as local offices of the department as prescribed by the rules and regulations of the department.

Whenever a city or town establishes a program or policy for the care, support, and relief of needy persons it shall provide notice of the program or policy to the county or counties within which the city or town is located. [1981 c 191 § 1; 1959 c 26 § 74.04.040. Prior: 1953 c 174 § 12; 1939 c 216 § 5; RRS § 10007-105a.]

74.04.050 Department to administer certain public assistance programs—Authority to administer medical services programs. (1) The department is designated as the single state agency to administer the following public assistance programs:

(a) Temporary assistance to [for] needy families;

(b) Child welfare services; and

(c) Any other programs of public assistance for which provision for federal grants or funds may from time to time be made, except as otherwise provided by law.

(2) The authority is hereby designated as the single state agency to administer the medical services programs established under chapter 74.09 RCW, including the state chil-

dren's health insurance program, Titles XIX and XXI of the federal social security act of 1935, as amended.

(3) The department and the authority are hereby empowered and authorized to cooperate in the administration of such federal laws, consistent with the public assistance laws of this state, as may be necessary to qualify for federal funds.

(4) The state hereby accepts and assents to all the present provisions of the federal law under which federal grants or funds, goods, commodities, and services are extended to the state for the support of programs referenced in this section, and to such additional legislation as may subsequently be enacted as is not inconsistent with the purposes of this title, authorizing public welfare and assistance activities. The provisions of this title shall be so administered as to conform with federal requirements with respect to eligibility for the receipt of federal grants or funds.

(5) The department and the authority shall periodically make application for federal grants or funds and submit such plans, reports and data, as are required by any act of congress as a condition precedent to the receipt of federal funds for such assistance. The department and the authority shall make and enforce such rules and regulations as shall be necessary to insure compliance with the terms and conditions of such federal grants or funds. [2011 1st sp.s. c 15 § 64; 1981 1st ex.s. c 6 § 3; 1981 c 8 § 3; 1963 c 228 § 3; 1959 c 26 § 74.04.050. Prior: 1955 c 273 § 21; 1953 c 174 § 6; 1939 c 216 § 6; RRS § 10007-106a.]

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

74.04.055 Cooperation with federal government—Construction—Conflict with federal requirements. In furtherance of the policy of this state to cooperate with the federal government in the programs included in this title the secretary or director, as appropriate, shall issue such rules and regulations as may become necessary to entitle this state to participate in federal grants-in-aid, goods, commodities and services unless the same be expressly prohibited by this title. Any section or provision of this title 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 matching or other funds for the various programs of public assistance. If any part of this chapter 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 chapter is hereby 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 this chapter. [2011 1st sp.s. c 15 § 65; 1991 c 126 § 2; 1979 c 141 § 298; 1963 c 228 § 4; 1959 c 26 § 74.04.055. Prior: 1953 c 174 § 50.]

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.

74.04.057 Promulgation of rules and regulations to qualify for federal funds. The department is authorized to promulgate such rules and regulations as are necessary to qualify for any federal funds available under Title XVI of the federal social security act, and any other combination of existing programs of assistance consistent with federal law and regulations. [1969 ex.s. c 173 § 3.]

74.04.060 Records, confidential—Exceptions—Penalty. (1)(a) For the protection of applicants and recipients, the department, the authority, and the county offices and their respective officers and employees are prohibited, except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the programs of this title. In any judicial proceeding, except such proceeding as is directly concerned with the administration of these programs, such records, files, papers and communications, and their contents, shall be deemed privileged communications and except for the right of any individual to inquire of the office whether a named individual is a recipient of welfare assistance and such person shall be entitled to an affirmative or negative answer.

(b) Unless prohibited by federal law, for the purpose of investigating and preventing child abuse and neglect and providing for the health care coordination and well-being of children in foster care, the department and the authority shall disclose to the department of children, youth, and families the following information: Developmental disabilities administration client records; home and community services client records; long-term care facility or certified community residential supports records; health care information; child support information; food assistance information; and public assistance information. Disclosure under this subsection (1)(b) is mandatory for the purposes of the federal health insurance portability and accountability act.

(c) Upon written request of a parent who has been awarded visitation rights in an action for divorce or separation or any parent with legal custody of the child, the department shall disclose to him or her the last known address and location of his or her natural or adopted children. The secretary shall adopt rules which establish procedures for disclosing the address of the children and providing, when appropriate, for prior notice to the custodian of the children. The notice shall state that a request for disclosure has been received and will be complied with by the department unless the department receives a copy of a court order which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the other party or the child. Information supplied to a parent by the department shall be used only for purposes directly related to the enforcement of the visitation and custody provisions of the court order of separation or decree of divorce. No parent shall disclose such information to any other person except for the purpose of enforcing visitation provisions of the said order or decree.

(d) The department shall review methods to improve the protection and confidentiality of information for recipients of welfare assistance who have disclosed to the department that they are past or current victims of domestic violence or stalking.

(2) The county offices shall maintain monthly at their offices a report showing the names and addresses of all recipients in the county receiving public assistance under this title,

together with the amount paid to each during the preceding month.

(3) The provisions of this section shall not apply to duly designated representatives of approved private welfare agencies, public officials, members of legislative interim committees and advisory committees when performing duties directly connected with the administration of this title, such as regulation and investigation directly connected therewith: PROVIDED, HOWEVER, That any information so obtained by such persons or groups shall be treated with such degree of confidentiality as is required by the federal social security law.

(4) It shall be unlawful, except as provided in this section, for any person, body, association, firm, corporation or other agency to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists or names for commercial or political purposes of any nature. The violation of this section shall be a gross misdemeanor. [2017 3rd sp.s. c 6 § 817; 2011 1st sp.s. c 15 § 66; 2006 c 259 § 5; 1987 c 435 § 29; 1983 1st ex.s. c 41 § 32; 1973 c 152 § 1; 1959 c 26 § 74.04.060. Prior: 1953 c 174 § 7; 1950 ex.s. c 10 § 1; 1941 c 128 § 5; Rem. Supp. 1941 § 10007-106b.]

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—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.

Child support, department may disclose information to internal revenue department: RCW 74.20.160.

Additional notes found at www.leg.wa.gov

74.04.062 Disclosure of recipient location to police officer or immigration official. Upon written request of a person who has been properly identified as an officer of the law or a properly identified United States immigration official the department or authority shall disclose to such officer the current address and location of a recipient of public welfare if the officer furnishes the department or authority with such person's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive, that the location or apprehension of such fugitive is within the officer's official duties, and that the request is made in the proper exercise of those duties.

When the department or authority becomes aware that a public assistance recipient is the subject of an outstanding warrant, the department or authority may contact the appropriate law enforcement agency and, if the warrant is valid, provide the law enforcement agency with the location of the recipient. [2011 1st sp.s. c 15 § 67; 1997 c 58 § 1006; 1973 c 152 § 2.]

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

74.04.070 County office—Administrator. There may be established in each county of the state a county office which shall be administered by an executive officer designated as the county administrator. The county administrator shall be appointed by the secretary in accordance with the rules and regulations of the state merit system. [1979 c 141 § 299; 1959 c 26 § 74.04.070. Prior: 1953 c 174 § 13; 1941 c 128 § 2, part; 1939 c 216 § 4, part; Code 1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007-104a, part.]

74.04.080 County administrator—Personnel—Bond. The county administrator shall have the power to, and shall, employ such personnel as may be necessary to carry out the provisions of this title, which employment shall be in accordance with the rules and regulations of the state merit system, and in accordance with personnel and administrative standards established by the department. The county administrator before qualifying shall furnish a surety bond in such amount as may be fixed by the secretary, but not less than five thousand dollars, conditioned that the administrator will faithfully account for all money and property that may come into his or her possession or control. The cost of such bond shall be an administrative expense and shall be paid by the department. [2013 c 23 § 194; 1979 c 141 § 300; 1959 c 26 § 74.04.080. Prior: 1953 c 174 § 14; 1941 c 128 § 2, part; 1939 c 216 § 4, part; Code 1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007-104a, part.]

74.04.180 Joint county administration. Public assistance may be administered through a single administrator and a single administrative office for one or more counties. There may be a local office for the transaction of official business maintained in each county. [1959 c 26 § 74.04.180. Prior: 1953 c 174 § 15; 1939 c 216 § 12; RRS § 10007-112a.]

74.04.200 Standards—Established, enforced. It shall be the duty of the department of social and health services to establish statewide standards which may vary by geographical areas to govern the granting of assistance in the several categories of this title and it shall have power to compel compliance with such standards as a condition to the receipt of state and federal funds by counties for social security purposes. [1981 1st ex.s. c 6 § 4; 1981 c 8 § 4; 1979 c 141 § 302; 1959 c 26 § 74.04.200. Prior: 1939 c 216 § 14; RRS § 10007-114a.]

Additional notes found at www.leg.wa.gov

74.04.205 Simplified reporting for the food stamp program. (1) To the maximum extent allowable by federal law, the department shall implement simplified reporting for the food stamp program by October 31, 2004.

(2) For the purposes of this section, "simplified reporting" means the only change in circumstance that a recipient of a benefit program must report between eligibility reviews is an increase of income that would result in ineligibility for the benefit program or a change of address. Every six months the assistance unit must either complete a semiannual report or participate in an eligibility review. [2004 c 54 § 3.]

Findings—Conflict with federal requirements—2004 c 54: See notes following RCW 28A.235.160.

74.04.210 Basis of allocation of moneys to counties. The moneys appropriated for public assistance purposes and subject to allocation as in this title provided shall be allocated to counties on the basis of past experience and established case load history. [1959 c 26 § 74.04.210. Prior: 1939 c 216 § 15; RRS § 10007-115a.]

74.04.225 Opportunity portal—Access to available services facilitated—Report to legislature and governor. (1) An online opportunity portal shall be established to provide the public with more effective access to available state, federal, and local services. The secretary of the department of social and health services shall act as the executive branch sponsor of the portal planning process. Under the leadership of the secretary, the department shall:

(a) Identify and select an appropriate solution and acquisition approach to integrate technology systems to create a user-friendly electronic tool for Washington residents to apply for benefits;

(b) Facilitate the adaptation of state information technology systems to allow applications generated through the opportunity portal and other compatible electronic application systems to seamlessly link to appropriate state information systems;

(c) Ensure that the portal provides access to a broad array of state, federal, and local services, including but not limited to: Health care services, higher education financial aid, tax credits, civic engagement, nutrition assistance, energy assistance, family support, and the programs under RCW 74.62.030 and 43.185C.220 and as defined in RCW 10.101.010, 13.34.030, *70.96A.530, 74.04.005, **74.04.652, 74.04.655, 74.04.657, and 74.62.005 through 74.62.030;

(d) Design an implementation strategy for the portal that maximizes collaboration with community-based organizations to facilitate its use by low-income individuals and families;

(e) Provide access to the portal at a wide array of locations including but not limited to: Community or technical colleges, community college campuses where community service offices are colocated, community-based organizations, libraries, churches, food banks, state agencies, early childhood education sites, and labor unions;

(f) Ensure project resources maximize available federal and private funds for development and initial operation of the opportunity portal. Any incidental costs to state agencies shall be derived from existing resources. This subsection does not obligate or preclude the appropriation of future state funding for the opportunity portal;

(g) Determine the solution and acquisition approach by June 1, 2010.

(2) By December 1, 2011, and annually thereafter, the department of social and health services shall report to the legislature and governor. The report shall include data and information on implementation and outcomes of the opportunity portal, including any increases in the use of public benefits and increases in federal funding.

(3) The department shall develop a plan for implementing paperless application processes for the services included in the opportunity portal for which the electronic exchange of application information is possible. The plan should include a goal of achieving, to the extent possible, the transition of these services to paperless application processes by July 1, 2012. The plan must comply with federal statutes and regulations and must allow applicants to submit applications by alternative means to ensure that access to benefits will not be restricted.

(4) To the extent that the department enters into a contractual relationship to accomplish the purposes of this section, such contract or contracts shall be performance-based. [2011 1st sp.s. c 36 § 19; 2010 1st sp.s. c 8 § 2.]

Reviser's note: *(1) RCW 70.96A.530 expired June 30, 2013.
**(2) RCW 74.04.652 was repealed by 2012 c 57 § 1.

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Contingent validity—2010 1st sp.s. c 8 § 2: "*If private funding sufficient to implement and operate the portal authorized under section 2 of this act is not secured by December 31, 2010, section 2 of this act is null and void." [2010 1st sp.s. c 8 § 36.]

***Reviser's note:** The code reviser's office was informed by the department of social and health services that funding was secured to implement this section.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: "Sections 1 through 10 and 29 of this act shall be implemented within the amounts appropriated specifically for these purposes in the omnibus operating appropriations act." [2010 1st sp.s. c 8 § 37.]

Findings—Intent—2010 1st sp.s. c 8: "(1) The legislature finds that:

(a) Low-income families and individuals often face significant barriers to receiving the services and benefits that they are qualified to receive. These services are essential to meeting individuals' basic needs, and provide critical support to low-income individuals who are working or who have disabilities that prevent them from working;

(b) Each year millions of federal dollars go unclaimed due to underutilization of benefits such as tax credits, health care coverage, and food support;

(c) State agencies have been engaged in an effort to implement an online benefit portal to simplify and streamline access to state, federal, and local benefits that include a broad array of public benefits;

(d) Access to education and training gives low-income individuals and families the opportunity to acquire the skills they need to become successfully employed and attain self-sufficiency; and

(e) Agencies have been engaged in efforts to increase access to training and education for recipients of federal food assistance.

(2) The legislature therefore intends to strengthen existing efforts by providing enhanced structure and direction to ensure that a strong partnership among colleges, state agencies, community partners, and philanthropy be established. The legislature also intends to provide an efficient, effective, integrated approach to the delivery of basic support services and education and training programs. The integrated approach should include the creation of a one-stop-shop, online benefits portal where individuals can apply for a broad array of services, including public benefits and education and training support, and the expansion of the food stamp employment and training program.

(3) The legislature further finds that:

(a) The general assistance program can be reformed to better support the ability of persons who are unable to work due to physical or mental health impairments to either return to work, or transition to federal supplemental security income benefits; and

(b) Persons who are homeless and suffering from mental illness or chemical dependency are particularly vulnerable, because homelessness is a substantial barrier to successful participation in, and completion of, needed treatment services.

(4) Through the reforms included in this act, the legislature intends to end the general assistance program and establish the disability lifeline program, and to implement multiple strategies designed to improve the employment and basic support outcomes of persons receiving disability lifeline benefits. The legislature further intends to focus services on persons who are homeless and have a mental illness or chemical dependency by providing housing vouchers as an alternative to a cash grant so that these persons can be in stable housing and thus have a greater opportunity to succeed in treatment." [2010 1st sp.s. c 8 § 1.]

Short title—2010 1st sp.s. c 8: "This act shall be known and cited as the security lifeline act." [2010 1st sp.s. c 8 § 33.]

Effective date—2010 1st sp.s. c 8: "Except for section 10 of this act, 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 29, 2010]." [2010 1st sp.s. c 8 § 34.]

74.04.230 Medical care services benefits—Mental health services. Persons eligible for medical care services benefits are eligible for mental health services to the extent that they meet the client definitions and priorities established by chapter 71.24 RCW. [2011 1st sp.s. c 36 § 20; 2010 1st sp.s. c 8 § 20; 1982 c 204 § 16.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Sliding-scale fee schedules for clients receiving behavioral health services: RCW 71.24.215.

74.04.265 Earnings—Deductions from grants. The secretary may issue rules consistent with federal laws and with memorials of the legislature, as will recognize the income of any persons without the deduction in full thereof from the amount of their grants. [1979 c 141 § 303; 1965 ex.s. c 35 § 1; 1959 c 26 § 74.04.265. Prior: 1953 c 174 § 16.]

74.04.266 Aged, blind, or disabled assistance—Medical care services—Earned income exemption to be established for unemployable persons. In determining need for aged, blind, or disabled assistance, and medical care services, the department may by rule and regulation establish a monthly earned income exemption in an amount not to exceed the exemption allowable under disability programs authorized in Title XVI of the federal social security act. [2011 1st sp.s. c 36 § 21; 2010 1st sp.s. c 8 § 21; 1977 ex.s. c 215 § 1.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.04.280 Assistance nontransferable and exempt from process. Assistance given under this title shall not be transferable or assignable at law or in equity and none of the moneys received by recipients under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. [1959 c 26 § 74.04.280. Prior: 1939 c 216 § 25; RRS § 10007-125a.]

74.04.290 Subpoena of witnesses, books, records, etc. In carrying out any of the provisions of this title, the secretary, the director, county administrators, hearing examiners, or other duly authorized officers of the department or authority shall have power to subpoena witnesses, administer oaths, take testimony and compel the production of such papers, books, records and documents as they may deem relevant to the performance of their duties. Subpoenas issued under this power shall be under RCW 43.20A.605. [2011 1st sp.s. c 15 § 68; 1983 1st ex.s. c 41 § 22; 1979 ex.s. c 171 § 2; 1979 c 141 § 305; 1969 ex.s. c 173 § 2; 1959 c 26 § 74.04.290. Prior: 1939 c 216 § 26; RRS § 10007-126a.]

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

74.04.300 Recovery of payments improperly received—Lien—Recipient reporting requirements. If a recipient receives public assistance and/or food stamps or food stamp benefits transferred electronically for which the recipient is not eligible, or receives public assistance and/or food stamps or food stamp benefits transferred electronically in an amount greater than that for which the recipient is eligible, the portion of the payment to which the recipient is not entitled shall be a debt due the state recoverable under RCW 43.20B.030 and 43.20B.620 through 43.20B.645. It shall be the duty of recipients of cash benefits to notify the department of changes to earned income as defined in *RCW 74.04.005(11). It shall be the duty of recipients of cash benefits to notify the department of changes to liquid resources as defined in *RCW 74.04.005(10) that would result in ineligibility for cash benefits. It shall be the duty of recipients of food benefits to report changes in income that result in ineligibility for food benefits. All recipients shall report changes required in this section by the tenth of the month following the month in which the change occurs. The department shall make a determination of eligibility within ten days from the date it receives the reported change from the recipient. The department shall adopt rules consistent with federal law and regulations for additional reporting requirements. The department shall advise applicants for assistance that failure to report as required, failure to reveal resources or income, and false statements will result in recovery by the state of any overpayment and may result in criminal prosecution. [2003 c 208 § 1; 1998 c 79 § 7; 1987 c 75 § 32; 1982 c 201 § 16; 1980 c 84 § 2; 1979 c 141 § 306; 1973 1st ex.s. c 49 § 1; 1969 ex.s. c 173 § 18; 1959 c 26 § 74.04.300. Prior: 1957 c 63 § 3; 1953 c 174 § 35; 1939 c 216 § 27; RRS § 10007-127a.]

***Reviser's note:** RCW 74.04.005 was amended by 2010 1st sp.s. c 8 § 4, changing subsections (11) and (10) to subsections (12) and (11), respectively. RCW 74.04.005 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsections (12) and (11) to subsections (9) and (13), respectively.

Additional notes found at www.leg.wa.gov

74.04.310 Authority to accept contributions. In furthering the purposes of this title, the secretary or any county administrator may accept contributions or gifts in cash or otherwise from persons, associations or corporations, such contributions to be disbursed in the same manner as moneys appropriated for the purposes of this title: PROVIDED, That the donor of such gifts may stipulate the manner in which such gifts shall be expended. [1979 c 141 § 309; 1959 c 26 § 74.04.310. Prior: 1939 c 216 § 28; RRS § 10007-128a.]

74.04.330 Annual reports by assistance organizations—Penalty. Every person, firm, corporation, association or organization receiving twenty-five percent or more of its income from contributions, gifts, dues, or other payments from persons receiving assistance, community work and

training, federal-aid assistance, or any other form of public assistance from the state of Washington or any agency or subdivision thereof, and engaged in political or other activities in behalf of such persons receiving such public assistance, shall, within ninety days after the close of each calendar year, make a report to the secretary of social and health services for the preceding year, which report shall contain:

(1) A statement of the total amount of contributions, gifts, dues, or other payments received;

(2) The names of any and all persons, firms, corporations, associations or organizations contributing the sum of twenty-five dollars or more during such year, and the amounts contributed by such persons, firms, corporations, associations, or organizations;

(3) A full and complete statement of all disbursements made during such year, including the names of all persons, firms, corporations, associations, or organizations to whom any moneys were paid, and the amounts and purposes of such payments; and

(4) Every such report so filed shall constitute a public record.

(5) Any person, firm, or corporation, and any officer or agent of any firm, corporation, association or organization, violating this section by failing to file such report, or in any other manner, shall be guilty of a gross misdemeanor. [1979 c 141 § 310; 1963 c 228 § 5; 1959 c 26 § 74.04.330. Prior: 1941 c 170 § 7; Rem. Supp. 1941 § 10007-138.]

74.04.340 Federal surplus commodities—Certification of persons eligible to receive commodities. The state department of social and health services is authorized to assist needy families and individuals to obtain federal surplus commodities for their use, by certifying, when such is the case, that they are eligible to receive such commodities. However, only those who are receiving or are eligible for public assistance or care and such others as may qualify in accordance with federal requirements and standards shall be certified as eligible to receive such commodities. [1979 c 141 § 311; 1959 c 26 § 74.04.340. Prior: 1957 c 187 § 2.]

Purchase of federal property: Chapter 39.32 RCW.

74.04.350 Federal surplus commodities—Not to be construed as public assistance, eligibility not affected. Federal surplus commodities shall not be deemed or construed to be public assistance and care or a substitute, in whole or in part, therefor; and the receipt of such commodities by eligible families and individuals shall not subject them, their legally responsible relatives, their property, or their estates to any demand, claim, or liability on account thereof. A person's need or eligibility for public assistance or care shall not be affected by his or her receipt of federal surplus commodities. [2013 c 23 § 195; 1959 c 26 § 74.04.350. Prior: 1957 c 187 § 3.]

74.04.360 Federal surplus commodities—Certification deemed administrative expense of department. Expenditures made by the state department of social and health services for the purpose of certifying eligibility of needy families and individuals for federal surplus commodities shall be deemed to be expenditures for the administration of public assistance and care. [1979 c 141 § 312; 1959 c 26 § 74.04.360. Prior: 1957 c 187 § 4.]

74.04.370 Federal surplus commodities—County program, expenses, handling of commodities. See RCW 36.39.040.

74.04.380 Federal and other surplus food commodities—Agreements—Personnel—Facilities—Cooperation with other agencies—Discontinuance of program. The secretary of social and health services, from funds appropriated to the department for such purpose, shall, upon receipt of authorization from the governor, provide for the receiving, warehousing and distributing of federal and other surplus food commodities for the use and assistance of recipients of public assistance or other needy families and individuals certified as eligible to obtain such commodities. The secretary is authorized to enter into such agreements as may be necessary with the federal government or any state agency in order to participate in any program of distribution of surplus food commodities including but not limited to a food stamp or benefit program. The secretary shall hire personnel, establish distribution centers and acquire such facilities as may be required to carry out the intent of this section; and the secretary may carry out any such program as a sole operation of the department or in conjunction or cooperation with any similar program of distribution by private individuals or organizations, any department of the state or any political subdivision of the state.

The secretary shall discontinue such program, or any part thereof, whenever in the determination of the governor such program, or any part thereof, is no longer in the best interest of the state. [1998 c 79 § 8; 1979 c 141 § 313; 1963 c 219 § 1; 1961 c 112 § 1.]

74.04.385 Unlawful practices relating to surplus commodities—Penalty. It shall be unlawful for any recipient of federal or other surplus commodities received under RCW 74.04.380 to sell, transfer, barter, or otherwise dispose of such commodities to any other person. It shall be unlawful for any person to receive, possess, or use any surplus commodities received under RCW 74.04.380 unless he or she has been certified as eligible to receive, possess, and use such commodities by the state department of social and health services.

Violation of the provisions of RCW 74.04.380 or this section shall constitute a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five hundred dollars or both. [2013 c 23 § 196; 1979 c 141 § 314; 1963 c 219 § 2.]

74.04.480 Educational leaves of absence for personnel. The state department of social and health services is hereby authorized to promulgate rules and regulations governing the granting to any employee of the department, other than a provisional employee, a leave of absence for educational purposes to attend an institution of learning for the purpose of improving his or her skill, knowledge, and technique in the administration of social welfare programs which will benefit the department.

Pursuant to the rules and regulations of the department, employees of the department who are engaged in the administration of public welfare programs may (1) attend courses of training provided by institutions of higher learning; (2) attend special courses of study or seminars of short duration conducted by experts on a temporary basis for the purpose; (3) accept fellowships or traineeships at institutions of higher learning with such stipends as are permitted by regulations of the federal government.

The department of social and health services is hereby authorized to accept any funds from the federal government or any other public or private agency made available for training purposes for public assistance personnel and to conform with such requirements as are necessary in order to receive such funds. [2013 c 23 § 197; 1979 c 141 § 321; 1963 c 228 § 15.]

74.04.500 Food stamp program—Authorized. The department is authorized to establish a food stamp or benefit program under the federal food stamp act of 1977, as amended. [1998 c 79 § 9; 1991 c 126 § 3; 1979 c 141 § 322; 1969 ex.s. c 172 § 4.]

Overpayment, recovery: RCW 74.04.300.

Unlawful use of food stamps: RCW 9.91.140.

74.04.510 Food stamp program—Rules. The department shall adopt rules conforming to federal laws, rules, and regulations required to be observed in maintaining the eligibility of the state to receive from the federal government and to issue or distribute to recipients, food stamps, coupons, or food stamp or coupon benefits transferred electronically under a food stamp or benefits plan. Such rules shall relate to and include, but shall not be limited to: (1) The classifications of and requirements of eligibility of households to receive food stamps, coupons, or food stamp or coupon benefits transferred electronically; and (2) the periods during which households shall be certified or recertified to be eligible to receive food stamps, coupons, or food stamp or coupon benefits transferred electronically under this plan. [1998 c 79 § 10; 1981 1st ex.s. c 6 § 5; 1981 c 8 § 5; 1969 ex.s. c 172 § 6.]

Additional notes found at www.leg.wa.gov

74.04.515 Food stamp program—Discrimination prohibited. In administering the food stamp or benefits program, there shall be no discrimination against any applicant or recipient by reason of age, sex, handicap, religious creed, political beliefs, race, color, or national origin. [1998 c 79 § 11; 1991 c 126 § 4; 1969 ex.s. c 172 § 7.]

74.04.520 Food stamp program—Confidentiality. The provisions of RCW 74.04.060 relating to disclosure of information regarding public assistance recipients shall apply to recipients of food stamps or food stamp benefits transferred electronically. [1998 c 79 § 12; 1969 ex.s. c 172 § 8.]

74.04.535 Food stamp employment and training program. (1) The department, the employment security department, and the state board for community and technical colleges shall work in partnership to expand the food stamp employment and training program. Subject to federal approval, the program shall be expanded to three additional community colleges or other community-based locations in 2010 and shall expand capacity at participating colleges. To the greatest extent possible, expansion shall be geographically diverse. The agencies shall:

(a) Identify and seek out partnerships with community-based organizations that can provide support services and case management to participants through performance-based contracts in the food stamp employment and training program, and do not replace the positions or work of department employees;

(b) Identify eligible nonfederal matching funds to draw down the federal match for food stamp employment and training services. Matching funds may include: Local funds, foundation grants, employer-paid costs, and the state allocation to community and technical colleges.

(2) Employment and training funds may be allocated for: Educational programs to develop skills for employability, vocational education, English as a second language courses, adult basic education, courses to assist persons to obtain a high school equivalency certificate as described in RCW 28B.50.536, remedial programs, job readiness training, case management, intake, assessment, evaluation, and barrier removal and support services such as tuition, books, child care, transportation, housing, and counseling services.

(3) The department shall annually track and report outcomes including those achieved through performance-based contracts as follows: Federal funding received, the number of participants served, achievement points, the number of participants who enter employment during or after participation in the food stamp employment and training program, and the average wage of jobs attained. The report shall be submitted to the governor and appropriate committees of the legislature on November 1st of each year, beginning in 2010.

(4) For purposes of this section, "food stamp employment and training program" refers to a program established and administered through the employment security department and the department of social and health services. [2013 c 39 § 26; 2010 1st sp.s. c 8 § 3.]

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.04.541 Supplemental nutrition assistance program benefits—Distribution dates. Beginning February 1, 2017, the department must expand the dates it distributes supplemental nutrition assistance program benefits from the first through the tenth of every month, to the first through the twentieth of every month. [2016 c 54 § 1.]

74.04.600 Supplemental security income program—Purpose. The purpose of RCW 74.04.600 through 74.04.650 is to recognize and accept that certain act of congress known as Public Law 92-603 and Public Law 93-66, and to enable the department of social and health services to take advantage of and implement the provisions of that act. The state shall provide assistance to those individuals who were eligible or would have been eligible for benefits under this state's old age assistance, disability assistance, and aid to the blind programs as they were in effect in December, 1973 but who will

no longer be eligible for such program due to Title XVI of the Social Security Act. [1973 2nd ex.s. c 10 § 1.]

74.04.610 Supplemental security income program—Termination of federal financial assistance payments—Supersession by supplemental security income program. Effective January 1, 1974, the financial assistance payments under the federal aid categories of old age assistance, disability assistance, and blind assistance provided in chapters 74.08, *74.10, and 74.16 RCW, respectively, and the corresponding provisions of RCW 74.04.005, shall be terminated and superseded by the national program to provide supplemental security income to individuals who have attained age sixty-five or are blind or disabled as established by Public Law 92-603 and Public Law 93-66: PROVIDED, That the agreements between the department of social and health services and the United States department of health, education and welfare receive such legislative authorization and/or ratification as required by **RCW 74.04.630. [1973 2nd ex.s. c 10 § 2.]

Reviser's note: *(1) Chapter 74.10 RCW was repealed by 1981 1st ex.s. c 6 § 28, effective July 1, 1982; chapter 74.16 RCW was repealed by 1983 c 194 § 30, effective June 30, 1983.

**(2) The legislative authorization and/or ratification requirements in RCW 74.04.630 were eliminated by 1986 c 158 § 22.

74.04.620 State supplement to national program of supplemental security income—Authorized—Reimbursement of interim assistance, attorneys' fees. (1) The department is authorized to establish a program of state supplementation to the national program of supplemental security income consistent with Public Law 92-603 and Public Law 93-66 to those persons who are in need thereof in accordance with eligibility requirements established by the department.

(2) The department is authorized to establish reasonable standards of assistance and resource and income exemptions specifically for such program of state supplementation which shall be consistent with the provisions of the Social Security Act.

(3) The department is authorized to make payments to applicants for supplemental security income, pursuant to agreements as provided in Public Law 93-368, who are otherwise eligible for aged, blind, or disabled assistance.

(4) Any agreement between the department and a supplemental security income applicant providing for the reimbursement of interim assistance to the department shall provide, if the applicant has been represented by an attorney, that twenty-five percent of the reimbursement received shall be withheld by the department and all or such portion thereof as has been approved as a fee by the United States department of health and human services shall be released directly to the applicant's attorney. The secretary may maintain such records as are deemed appropriate to measure the cost and effectiveness of such agreements and may make recommendations concerning the continued use of such agreements to the legislature. [2011 1st sp.s. c 36 § 22; 2010 1st sp.s. c 8 § 22; 1983 1st ex.s. c 41 § 37; 1981 1st ex.s. c 6 § 7; 1981 c 8 § 6; 1973 2nd ex.s. c 10 § 3.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following 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

74.04.630 State supplementation to national program of supplemental security income—Contractual agreements with federal government. The department may enter into contractual agreements with the United States department of health, education and welfare, consistent with the provisions of Public Laws 92-603 and 93-66, and to be effective January 1, 1974, for the purpose of enabling the secretary of the department of health, education and welfare to perform administrative functions of state supplementation to the national supplemental security income program and the determination of medicaid eligibility on behalf of the state. The department is authorized to transfer and make payments of state funds to the secretary of the department of health, education and welfare as required by Public Laws 92-603 and 93-66. These agreements shall be submitted for review and comment to the social and health services committees of the senate and house of representatives. The department of social and health services shall administer the state supplemental program as established in RCW 74.04.620. [2001 2nd sp.s. c 5 § 1; 1986 c 158 § 22; 1973 2nd ex.s. c 10 § 4.]

74.04.635 State supplement to national program of supplemental security income—World War II Philippine veterans. (1) Notwithstanding any other provision of law, any person receiving benefits under RCW 74.04.620 on December 14, 1999, and who meets the requirements of subsection (2) of this section is eligible to receive benefits under this section although he or she does not retain a residence in the state and returns to the Republic of the Philippines, if he or she maintains a permanent residence in the Republic of the Philippines without any lapse of his or her presence in the Republic of the Philippines.

(2) A person subject to subsection (1) of this section is eligible to receive benefits pursuant to this section if he or she was receiving benefits pursuant to RCW 74.04.620 on December 14, 1999, and meets both the following requirements:

(a) He or she is a veteran of World War II; and

(b)(i) He or she was a member of the government of the Commonwealth of the Philippines military forces who was in the service of the United States on July 26, 1941, or thereafter; or

(ii) He or she was a Regular Philippine Scout who enlisted in Filipino-manned units of the United States army prior to October 6, 1945; or

(iii) He or she was a member of the Special Philippine Scouts who enlisted in the United States Armed Forces between October 6, 1945, and June 30, 1947.

(3) Within funds appropriated for this purpose, the department is authorized to make a one-time lump sum payment of one thousand five hundred dollars to each person eligible for benefits under this section.

(a) Benefits paid under this section are in lieu of benefits paid under RCW 74.04.620 for the period for which the benefits are paid.

(b) Benefits are to be paid under this section for any period during which the recipient is receiving benefits under

Title 8 of the federal social security act as a result of the application of federal Public Law 106-169, subject to any limitations imposed by this section.

(4) This section applies only to an individual who returns to the Republic of the Philippines for the period during which the individual establishes and maintains a residence in the Republic of the Philippines. [2001 c 111 § 2.]

Findings—2001 c 111: "The legislature finds and declares:

(1) That soldiers who were members of the government of the Commonwealth of the Philippines military forces who were in the service of the United States of America on July 31, 1941, including the organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief of the Southwest Pacific Area or other competent authority in the Army of the United States, performed an invaluable function during World War II.

(2) It is in the public interest for the state of Washington to recognize those courageous soldiers who fought and defended American interests during World War II and who are currently receiving supplemental state benefits under RCW 74.04.620 as of December 14, 1999, by permitting them to return to their homeland to spend their last days without a complete forfeiture of benefits." [2001 c 111 § 1.]

74.04.640 Acceptance of referrals for vocational rehabilitation—Reimbursement. Referrals to the state department of social and health services for vocational rehabilitation made in accordance with section 1615 of Title XVI of the Social Security Act, as amended, shall be accepted by the state.

The department shall be reimbursed by the secretary of the department of health, education and welfare for the costs it incurs in providing such vocational rehabilitation services. [1973 2nd ex.s. c 10 § 5.]

74.04.650 Individuals failing to comply with federal requirements. Notwithstanding any other provisions of RCW 74.04.600 through 74.04.650, those individuals who have been receiving supplemental security income assistance and failed to comply with any federal requirements, including those relating to drug abuse and alcoholism treatment and rehabilitation, shall be ineligible for state assistance. [1981 1st ex.s. c 6 § 8; 1981 c 8 § 7; 1973 2nd ex.s. c 10 § 6.]

Additional notes found at www.leg.wa.gov

74.04.655 Vocational rehabilitation—Assessment, referral. (1) The economic services administration shall work jointly with the division of vocational rehabilitation to develop an assessment tool that must be used to determine whether the programs offered by the division of vocational rehabilitation could assist persons receiving benefits under RCW 74.62.030 and 43.185C.220 in returning to the workforce. The assessment tool shall be completed no later than December 1, 2010. The economic services administration shall begin using the tool no later than January 1, 2011. No later than December 30, 2011, the department shall report on the use of the tool and to what extent the programs offered by the division of vocational rehabilitation have been successful in returning persons receiving aged, blind, or disabled benefits to the workforce.

(2) After January 1, 2011, all persons receiving benefits under RCW 74.62.030 and 43.185C.230 shall be assessed to determine whether they would likely benefit from a program offered by the division of vocational rehabilitation. If the assessment indicates that the person might benefit, the economic services administration shall make a referral to the division of vocational rehabilitation. If the person is found eligible for a program with the division of vocational rehabilitation, he or she must participate in that program to remain eligible for the monthly stipend and housing voucher or a cash grant. If the person refuses to participate or does not complete the program, the department shall terminate the cash stipend and housing voucher or cash grant but may not terminate medical coverage and food benefits. [2011 1st sp.s. c 36 § 24; 2010 1st sp.s. c 8 § 5.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.04.657 Veterans' benefits—Assessment for eligibility. During the application process for benefits under RCW 74.62.030 and 43.185C.220, the department shall inquire of each applicant whether he or she has ever served in the United States military service. If the applicant answers in the affirmative, the department shall confer with a veterans benefit specialist with the Washington state department of veterans affairs or a contracted veterans service officer in the community to determine whether the applicant is eligible for any benefits or programs offered to veterans by either the state or the federal government. [2011 1st sp.s. c 36 § 25; 2010 1st sp.s. c 8 § 6.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.04.660 Family emergency assistance program—Extension of benefits during state of emergency. The department shall establish a consolidated emergency assistance program for families with children. Assistance may be provided in accordance with this section.

(1) Benefits provided under this program shall be limited to one period of time, as determined by the department, within any consecutive twelve-month period.

(2) Benefits under this program shall be provided to alleviate emergent conditions resulting from insufficient income and resources to provide for: Food, shelter, clothing, medical care, or other necessary items, as defined by the department. Benefits may also be provided for family reconciliation services, family preservation services, home-based services, short-term substitute care in a licensed agency as defined in RCW 74.15.020, crisis nurseries, therapeutic child care, or other necessary services as defined by the department. Benefits shall be provided only in an amount sufficient to cover the cost of the specific need, subject to the limitations established in this section.

(3)(a) The department shall, by rule, establish assistance standards and eligibility criteria for this program in accordance with this section.

(b) Eligibility for benefits or services under this section does not automatically entitle a recipient to medical assistance.

(4) The department shall seek federal emergency assistance funds to supplement the state funds appropriated for the operation of this program as long as other departmental programs are not adversely affected by the receipt of federal funds.

(5) If state funds appropriated for the consolidated emergency assistance program are exhausted, the department may discontinue the program.

(6) During a state of emergency and pursuant to an order from the governor, benefits under this program may be extended to individuals and families without children. [2008 c 181 § 301; 1994 c 296 § 1; 1993 c 63 § 1; 1989 c 11 § 26; 1985 c 335 § 3; 1981 1st ex.s. c 6 § 6.]

Additional notes found at www.leg.wa.gov

74.04.670 Long-term care services—Eligibility. (1) For purposes of *RCW 74.04.005(10)(a), an applicant or recipient is not eligible for long-term care services if the applicant or recipient's equity interest in the home exceeds an amount established by the department in rule, which shall not be less than five hundred thousand dollars. This requirement does not apply if any of the following persons related to the applicant or recipient are legally residing in the home:

(a) A spouse; or

(b) A dependent child under age twenty-one; or

(c) A dependent child with a disability; or

(d) A dependent child who is blind; and

(e) The dependent child in (c) and (d) of this subsection meets the federal supplemental security income program criteria for disabled and blind.

(2) The dollar amounts specified in this section shall be increased annually, beginning in 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers, all items, United States city average, rounded to the nearest one thousand dollars.

(3) This section applies to individuals who are determined eligible for medical assistance with respect to long-term care services based on an application filed on or after May 1, 2006. [2007 c 161 § 1.]

***Reviser's note:** RCW 74.04.005 was amended by 2010 1st sp.s. c 8 § 4, changing subsection (10)(a) to subsection (11)(a). RCW 74.04.005 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (11)(a) to subsection (13)(a).

74.04.750 Reporting requirements—Food stamp allotments and rent or housing subsidies, consideration as income. (1) Applicants and recipients under this title must satisfy all reporting requirements imposed by the department.

(2) The secretary shall have the discretion to consider: (a) Food stamp allotments or food stamp benefits transferred electronically and/or (b) rent or housing subsidies as income in determining eligibility for and assistance to be provided by public assistance programs. If the department considers food stamp allotments or food stamp benefits transferred electronically as income in determining eligibility for assistance, applicants or recipients for any grant assistance program must apply for and take all reasonable actions necessary to establish and maintain eligibility for food stamps or food stamp benefits transferred electronically. [1998 c 79 § 13; 1981 2nd ex.s. c 10 § 1.]

74.04.760 Minimum amount of monthly assistance payments. Payment of assistance shall not be made for any month if the payment prior to any adjustments would be less than ten dollars. However, if payment is denied solely by reason of this section, the individual with respect to whom such payment is denied is determined to be a recipient of assistance for purposes of eligibility for other programs of assistance except for a community work experience program. [1981 2nd ex.s. c 10 § 2.]

74.04.770 Consolidated standards of need—Rateable reductions—Grant maximums. The department shall establish consolidated standards of need each fiscal year which may vary by geographical areas, program, and family size, for temporary assistance for needy families, refugee assistance, supplemental security income, and benefits under RCW 74.62.030. Standards for temporary assistance for needy families, refugee assistance, and benefits under RCW 74.62.030 shall be based on studies of actual living costs and generally recognized inflation indices and shall include reasonable allowances for shelter, fuel, food, transportation, clothing, household maintenance and operations, personal maintenance, and necessary incidentals. The standard of need may take into account the economies of joint living arrangements, but unless explicitly required by federal statute, there shall not be proration of any portion of assistance grants unless the amount of the grant standard is equal to the standard of need.

The department is authorized to establish rateable reductions and grant maximums consistent with federal law.

Payment level will be equal to need or a lesser amount if rateable reductions or grant maximums are imposed. In no case shall a recipient of supplemental security income receive a state supplement less than the minimum required by federal law.

The department may establish a separate standard for shelter provided at no cost. [2011 1st sp.s. c 36 § 26; 2010 1st sp.s. c 8 § 23; 1997 c 59 § 11; 1983 1st ex.s. c 41 § 38; 1981 2nd ex.s. c 10 § 4.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following 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

74.04.790 Supplementary program—Reimbursement for employees being victims of assault. (1) For purposes of this section only, "assault" means an unauthorized touching of a child protective, child welfare, or adult protective services worker employed by the department of children, youth, and families or the department of social and health services resulting in physical injury to the employee.

(2) In recognition of the hazardous nature of employment in child protective, child welfare, and adult protective services, the legislature hereby provides a supplementary program to reimburse employees of the department, for some of their costs attributable to their being the victims of assault

while in the course of discharging their assigned duties. This program shall be limited to the reimbursement provided in this section.

(3) An employee is only entitled to receive the reimbursement provided in this section if the secretary of children, youth, and families, or the secretary's designee, or the secretary of social and health services, or the secretary's designee, finds that each of the following has occurred:

(a) A person has assaulted the employee while the employee was in the course of performing his or her official duties and, as a result thereof, the employee has sustained demonstrated physical injuries which have required the employee to miss days of work;

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment; and

(c) The department of labor and industries has approved the employee's workers' compensation application pursuant to chapter 51.32 RCW.

(4) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(5) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(6) The employee shall not be entitled to the reimbursement provided in subsection (4) of this section for any workday for which the secretary, or the secretary's designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(7) The reimbursement shall only be made for absences which the secretary, or the secretary's designee, believes are justified.

(8) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(9) All reimbursement payments required to be made to employees under this section shall be made by the department. The payments shall be considered as a salary or wage expense and shall be paid by the department in the same manner and from the same appropriations as other salary and wage expenses of the department.

(10) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right. [2019 c 470 § 15; 2006 c 95 § 2.]

Findings—Intent—2006 c 95: "The legislature finds that employees of the department of social and health services who provide child protective, child welfare, and adult protective services are sometimes faced with highly volatile, hostile, and/or threatening situations during the course of performing their official duties. The legislature finds that the work group convened by the department of social and health services pursuant to chapter 389, Laws of 2005, has made various recommendations regarding policies and protocols to address the safety of workers. The legislature intends to implement the work group's recommendations for statutory changes in recognition of the sometimes hazardous nature of employment in child protective, child welfare, and adult protective services." [2006 c 95 § 1.]

74.04.800 Incarcerated parents—Policies to encourage family contact and engagement. (1)(a) The secretary of social and health services and the secretary of the department of children, youth, and families shall review current department policies and assess the adequacy and availability of programs targeted at persons who receive services through the department who are the children and families of a person who is incarcerated in a department of corrections facility. Great attention shall be focused on programs and policies affecting foster youth who have a parent who is incarcerated.

(b) The secretary of social and health services and the secretary of the department of children, youth, and families shall adopt policies that encourage familial contact and engagement between inmates of the department of corrections facilities and their children with the goal of facilitating normal child development, while reducing recidivism and intergenerational incarceration. Programs and policies should take into consideration the children's need to maintain contact with his or her parent, the inmate's ability to develop plans to financially support their children, assist in reunification when appropriate, and encourage the improvement of parenting skills where needed. The programs and policies should also meet the needs of the child while the parent is incarcerated.

(2) The secretary of social and health services and the secretary of the department of children, youth, and families shall conduct the following activities to assist in implementing the requirements of subsection (1) of this section:

(a) Gather information and data on the recipients of public assistance, or children in the care of the state under chapter 13.34 RCW, who are the children and families of inmates incarcerated in department of corrections facilities; and

(b) Participate in the children of incarcerated parents advisory committee and report information obtained under this section to the advisory committee. [2017 3rd sp.s. c 6 § 329; 2007 c 384 § 3.]

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.

Intent—Finding—2007 c 384: See note following RCW 72.09.495.

74.04.805 Essential needs and housing support eligibility. (1) The department is responsible for determining eligibility for referral for essential needs and housing support under RCW 43.185C.220. Persons eligible are persons who:

(a) Are incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days. The standard for incapacity in this subsection, as evidenced by the ninety-day duration standard, is not intended to be as stringent as federal supplemental security income disability standards;

(b) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law;

(c) Have furnished the department their social security number. If the social security number cannot be furnished because it has not been issued or is not known, an application for a number must be made prior to authorization of benefits, and the social security number must be provided to the department upon receipt;

(d) Have countable income as described in RCW 74.04.005 at or below four hundred twenty-eight dollars for a married couple or at or below three hundred thirty-nine dollars for a single individual;

(e) Do not have countable resources in excess of those described in RCW 74.04.005; and

(f) Are not eligible for:

(i) The pregnant women assistance program; or

(ii) Federal aid assistance, other than basic food benefits transferred electronically and medical assistance.

(2) Recipients of aged, blind, or disabled assistance program benefits who meet other eligibility requirements in this section are eligible for a referral for essential needs and housing support services within funds appropriated for the department of commerce.

(3) The following persons are not eligible for a referral for essential needs and housing support:

(a) Persons who refuse or fail to cooperate in obtaining federal aid assistance, without good cause;

(b) Persons who refuse or fail without good cause to participate in drug or alcohol treatment if an assessment by a certified chemical dependency counselor indicates a need for such treatment. Good cause must be found to exist when a person's physical or mental condition, as determined by the department, prevents the person from participating in drug or alcohol dependency treatment, when needed outpatient drug or alcohol treatment is not available to the person in the county of his or her residence or when needed inpatient treatment is not available in a location that is reasonably accessible for the person; and

(c) Persons who are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or who are violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

(4) For purposes of determining whether a person is incapacitated from gainful employment under subsection (1) of this section:

(a) The department shall adopt by rule medical criteria for incapacity determinations to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information; and

(b) The process implementing the medical criteria must involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(5) For purposes of reviewing a person's continuing eligibility and in order to remain eligible for the program, persons who have been found to have an incapacity from gainful employment must demonstrate that there has been no material improvement in their medical or mental health condition. The department may discontinue benefits when there was specific error in the prior determination that found the person eligible by reason of incapacitation.

(6) The department must review the cases of all persons who have received benefits under the essential needs and housing support program for twelve consecutive months, and at least annually after the first review, to determine whether they are eligible for the aged, blind, or disabled assistance program. [2018 c 48 § 1; 2013 2nd sp.s. c 10 § 3.]

Effective date—2018 c 48 §§ 1 and 2: "Sections 1 and 2 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 immediately [March 13, 2018]." [2018 c 48 § 4.]

Effective date—2013 2nd sp.s. c 10: See note following RCW 74.62.030.

74.04.815 Military dependents—Home and community-based services programs. (1) As used in this section:

(a) "Dependent" means a spouse, birth child, adopted child, or stepchild of a military service member.

(b) "Legal resident" means a person who maintains Washington as his or her principal establishment, home of record, or permanent home and to where, whenever absent due to military obligation, he or she intends to return.

(c) "Military service" means service in the armed forces, armed forces reserves, or membership in the Washington national guard.

(d) "Military service member," for the purposes of this section, is expanded to mean a person who is currently in military service or who has separated from military service in the previous eighteen months either through retirement or military separation.

(2) A dependent, who is a legal resident of the state, having previously been determined to be eligible for developmental disability services through the department, shall retain eligibility as long as he or she remains a legal resident of the state regardless of having left the state due to the military service member's military assignment outside the state. If the state eligibility requirements change, the dependent shall retain eligibility until a reeligibility determination is made.

(3) Upon assessment determination, the department shall direct that services be provided consistent with Title 71A RCW and appropriate rules if the dependent furnishes:

(a) A copy of the military service member's DD-214 or other equivalent discharge paperwork; and

(b) Proof of the military service member's legal residence in the state, as provided under RCW 46.16A.140.

(4) For dependents who received developmental disability services and who left the state due to the military service member's military assignment outside the state, upon the dependent's return to the state and when a request for services is made, the department must:

(a) Determine eligibility for services which may include request for waiver services;

(b) Provide notification for the service eligibility determination which includes notification for denial of services; and

(c) Provide due process through the appeals processes established by the department.

(5) To continue eligibility under subsection (2) of this section, the dependent is required to inform the department of

his or her current address and provide updates as requested by the department.

(6) The secretary shall request a waiver from the appropriate federal agency if it is necessary to implement the provisions of this section.

(7) The department may adopt rules necessary to implement the provisions of this section. [2014 c 180 § 1.]

74.04.900 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 § 173.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 74.08 RCW
ELIGIBILITY GENERALLY—STANDARDS OF ASSISTANCE

Sections

Public assistance eligibility—Payments exempt: RCW 43.185C.140.

74.08.025 Eligibility for public assistance—Temporary assistance for needy families—Limitations for drug or alcohol-dependent persons. (1) Public assistance may be awarded to any applicant:

(a) Who is in need and otherwise meets the eligibility requirements of department assistance programs; and

(b) Who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; and

(c) Who is not an inmate of a public institution except as a patient in a medical institution or except as an inmate in a public institution who could qualify for federal aid assistance: PROVIDED, That the assistance paid by the department to recipients in nursing homes, or receiving nursing home care, may cover the cost of clothing and incidentals and general maintenance exclusive of medical care and health services. The department may pay a grant to cover the cost of clothing and personal incidentals in public or private medical institutions and institutions for tuberculosis. The department shall allow recipients in nursing homes to retain, in addition to the grant to cover the cost of clothing and incidentals, wages received for work as a part of a training or rehabilitative program designed to prepare the recipient for less restrictive placement to the extent permitted under Title XIX of the federal social security act.

(2) Any person otherwise qualified for temporary assistance for needy families who is assessed through the state alcohol and substance abuse program as drug or alcohol-dependent and requiring treatment to become employable shall be required by the department to participate in a drug or alcohol treatment program as a condition of benefit receipt.

(3) Pursuant to 21 U.S.C. 862a(d)(1), the department shall exempt individuals from the eligibility restrictions of 21 U.S.C. 862a(a)(1) and (2) to ensure eligibility for temporary assistance for needy families benefits and federal food assistance. [2019 c 343 § 1; 2011 1st sp.s. c 42 § 7; 2005 c 174 § 2; 2004 c 54 § 5; 1997 c 58 § 101; 1981 1st ex.s. c 6 § 9; 1981 c 8 § 8; 1980 c 79 § 1; 1971 ex.s. c 169 § 1; 1967 ex.s. c 31 § 1; 1959 c 26 § 74.08.025. Prior: 1953 c 174 § 19.]

Prospective application—2019 c 343: "This act applies prospectively only and not retroactively. Prospective application of this act allows families who have been previously permanently disqualified under prior policies to receive benefits prospectively only, if otherwise eligible." [2019 c 343 § 6.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Findings—2005 c 174: "The legislature finds that:

(1) Too many families with children in Washington are unable to afford shelter, clothing, and other necessities of life; basic necessities that are at the core of economic security and family stability.

(2) Parents who lack resources for shelter, clothing, and transportation are less likely to obtain employment or have the ability to adequately provide for their children's physical and emotional well-being and educational success.

(3) Washington's temporary assistance for needy families helps financially struggling families find jobs, keep their jobs, get better jobs, and build a better life for their children through the WorkFirst program.

(4) Participation in the WorkFirst program through temporary assistance for needy families is an important step towards self-sufficiency and decreased long-term reliance on governmental assistance.

(5) Removing this barrier to participation in temporary assistance for needy families and WorkFirst will serve to strengthen families and communities throughout the state.

(6) Preventing even one percent of these individuals from reoffending by extending economic and employment opportunities will result in law enforcement and correctional savings that substantially exceed the cost of temporary assistance for needy families and WorkFirst services." [2005 c 174 § 1.]

Findings—Conflict with federal requirements—2004 c 54: See notes following RCW 28A.235.160.

Additional notes found at www.leg.wa.gov

74.08.030 Old age assistance eligibility requirements. In addition to meeting the eligibility requirements of RCW 74.08.025, an applicant for old age assistance must be an applicant who:

(1) Has attained the age of sixty-five: PROVIDED, That if an applicant for old age assistance is already on the assistance rolls in some other program or category of assistance, such applicant shall be considered eligible the first of the month immediately preceding the date on which such applicant will attain the age of sixty-five; and

(2) Is a resident of the state of Washington. [1971 ex.s. c 169 § 2; 1961 c 248 § 1; 1959 c 26 § 74.08.030. Prior: 1953 c 174 § 20; 1951 c 165 § 1; 1951 c 1 § 5 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 4; Rem. Supp. 1949 § 9998-33d.]

74.08.043 Need for personal and special care—Authority to consider in determining living requirements. In determining the living requirements of otherwise eligible applicants and recipients of supplemental security income and benefits under RCW 74.62.030 and 43.185C.220, the department is authorized to consider the need for personal and special care and supervision due to physical and mental conditions. [2011 1st sp.s. c 36 § 27; 2010 1st sp.s. c 8 § 24; 1981 1st ex.s. c 6 § 12; 1981 c 8 § 11; 1969 ex.s. c 172 § 10.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following 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

74.08.044 Need for personal and special care—Licensing—Rules and regulations. The department is authorized to promulgate rules and regulations establishing eligibility for alternate living arrangements, and license the same, including minimum standards of care, based upon need for personal care and supervision beyond the level of board and room only, but less than the level of care required in a hospital or a nursing facility as defined in the federal social security act. [1991 sp.s. c 8 § 5; 1975-'76 2nd ex.s. c 52 § 1; 1969 ex.s. c 172 § 11.]

Additional notes found at www.leg.wa.gov

74.08.045 Need for personal and special care—Purchase of personal and special care by department. The department may purchase such personal and special care at reasonable rates established by the department from substitute homes and intermediate care facilities providing [provided] this service is in compliance with standards of care established by the regulations of the department. [1969 ex.s. c 172 § 12.]

74.08.046 Energy assistance allowance. There is designated to be included in the public assistance payment level a monthly energy assistance allowance. The allowance shall be excluded from consideration as income for the purpose of determining eligibility and benefit levels of food stamp or benefits program recipients to the maximum extent exclusion is authorized by federal law. The allowance shall be calculated on a seasonal basis for the period of November 1st through April 30th. [1998 c 79 § 14; 1982 c 127 § 1.]

Legislative intent—1982 c 127: "It is the continuing intention of the legislature that first priority in the use of increased appropriations, expenditures, and payment levels for the 1981-83 biennium to income assistance recipients be for an energy allowance to offset the high and escalating costs of energy. Of the total amount appropriated or transferred for public assistance, an amount not to exceed $50,000,000 is designated as energy assistance allowance to meet the high cost of energy. This designation is consistent with the legislative intent of section 11, chapter 6, Laws of 1981 1st ex. sess. to assist public assistance recipients in meeting the high costs of energy." [1982 c 127 § 2.]

Additional notes found at www.leg.wa.gov

74.08.050 Applications for grants. Application for a grant in any category of public assistance shall be made to the county office by the applicant or by another on his or her behalf, and shall be reduced to writing upon standard forms prescribed by the department, and a written acknowledgment of receipt of the application by the department shall be given to each applicant at the time of making application. [2013 c 23 § 198; 1971 ex.s. c 169 § 3; 1959 c 26 § 74.08.050. Prior: 1953 c 174 § 26; 1949 c 6 § 6; Rem. Supp. 1949 § 9998-33f.]

74.08.055 Verification of applications—Electronic applications—Penalty. (1) Each applicant for or recipient of public assistance shall complete and sign a physical application or, if available, electronic application for assistance which shall contain or be verified by a written declaration that it is signed under the penalties of perjury. The department may make electronic applications available. The secretary, by rule and regulation, may require that any other forms filled out by applicants or recipients of public assistance shall contain or be verified by a written declaration that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each applicant shall be so informed at the time of the signing. The application and signature verification shall be in accordance with federal requirements for that program.

(2) Any applicant for or recipient of public assistance who willfully makes and signs any application, statement, other paper, or electronic record which contains or is verified by a written declaration that it is made under the penalties of perjury and which he or she does not believe to be true and correct as to every material matter is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) As used in this section:

(a) "Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

(b) "Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or

logically associated with a record and executed or adopted by a person with the intent to sign the record.

(c) "Sign" includes signing by physical signature, if available, or electronic signature. An application must contain a signature in either physical or, if available, electronic form. [2009 c 201 § 1; 2003 c 53 § 366; 1979 c 141 § 323; 1959 c 26 § 74.08.055. Prior: 1953 c 174 § 27.]

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

74.08.060 Action on applications—Ineligibility of inmates—Employment and training services. The department shall approve or deny the application within forty-five days after filing, and shall immediately notify the applicant in writing of its decision. If the department is not able within forty-five days, despite due diligence, to secure all information necessary to establish eligibility, the department shall continue to secure such information. If such information, when established, makes the applicant eligible, the department shall pay the grant from the date of authorization or forty-five days after the date of application, whichever is earlier, except that the department shall not make payments for any period of time in which the applicant is ineligible for public assistance as an inmate of a public institution under RCW 74.08.025(1)(c).

The department may, in respect to work requirements, provide employment and training services, including job search, job placement, work orientation, and necessary support services to verify eligibility. [2009 c 198 § 1; 1985 c 335 § 4; 1981 1st ex.s. c 6 § 13; 1969 ex.s. c 173 § 6; 1959 c 26 § 74.08.060. Prior: 1953 c 174 § 28; 1949 c 6 § 7; Rem. Supp. 1949 § 9998-33g.]

Effective date—2009 c 198: "This act takes effect November 1, 2009." [2009 c 198 § 2.]

Additional notes found at www.leg.wa.gov

74.08.080 Grievances—Departmental and judicial review. (1)(a) A public assistance applicant or recipient who is aggrieved by a decision of the department or an authorized agency of the department has the right to an adjudicative proceeding. A current or former recipient who is aggrieved by a department claim that he or she owes a debt for an overpayment of assistance or food stamps or food stamp benefits transferred electronically, or both, has the right to an adjudicative proceeding.

(b) An applicant or recipient has no right to an adjudicative proceeding when the sole basis for the department's decision is a state or federal law that requires an assistance adjustment for a class of recipients.

(2) The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW, and this subsection.

(a) The applicant or recipient must file the application for an adjudicative proceeding with the secretary within ninety days after receiving notice of the aggrieving decision.

(b) The hearing shall be conducted at the local community services office or other location in Washington convenient to the appellant.

(c) The appellant or his or her representative has the right to inspect his or her department file and, upon request, to receive copies of department documents relevant to the proceedings free of charge.

(d) The appellant has the right to a copy of the tape recording of the hearing free of charge.

(e) The department is limited to recovering an overpayment arising from assistance being continued pending the adjudicative proceeding to the amount recoverable up to the sixtieth day after the secretary's receipt of the application for an adjudicative proceeding.

(f) If the final adjudicative order is made in favor of the appellant, assistance shall be paid from the date of denial of the application for assistance or thirty days following the date of application for temporary assistance for needy families or forty-five days after date of application for all other programs, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision.

(g) This subsection applies only to an adjudicative proceeding in which the appellant is an applicant for or recipient of medical assistance or the limited casualty program for the medically needy and the issue is his or her eligibility or ineligibility due to the assignment or transfer of a resource. The burden is on the department to prove by a preponderance of the evidence that the person knowingly and willingly assigned or transferred the resource at less than market value for the purpose of qualifying or continuing to qualify for medical assistance or the limited casualty program for the medically needy. If the prevailing party in the adjudicative proceeding is the applicant or recipient, he or she is entitled to reasonable attorney's fees.

(3) When a person files a petition for judicial review as provided in RCW 34.05.514 of an adjudicative order entered in a public assistance program, no filing fee shall be collected from the person and no bond shall be required on any appeal. In the event that the superior court, the court of appeals, or the supreme court renders a decision in favor of the appellant, said appellant shall be entitled to reasonable attorneys' fees and costs. If a decision of the court is made in favor of the appellant, assistance shall be paid from date of the denial of the application for assistance or thirty days after the application for temporary assistance for needy families or forty-five days following the date of application, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision. [1998 c 79 § 15; 1997 c 59 § 12; 1989 c 175 § 145; 1988 c 202 § 58; 1971 c 81 § 136; 1969 ex.s. c 172 § 2; 1959 c 26 § 74.08.080. Prior: 1953 c 174 § 31; 1949 c 6 § 9; Rem. Supp. 1949 § 9998-33i.]

Additional notes found at www.leg.wa.gov

74.08.090 Rule-making authority and enforcement. The department is hereby authorized to make rules and regulations not inconsistent with the provisions of this title to the end that this title shall be administered uniformly throughout the state, and that the spirit and purpose of this title may be complied with. The department shall have the power to compel compliance with the rules and regulations established by it. Such rules and regulations shall be filed in accordance with the Administrative Procedure Act, as it is now or hereafter amended, and copies shall be available for public inspection in the office of the department and in each county office.

[1969 ex.s. c 173 § 5; 1959 c 26 § 74.08.090. Prior: 1953 c 174 § 5; 1949 c 6 § 10; Rem. Supp. 1949 § 9998-33j.]

74.08.100 Age and residency verification—Felony. Proof of age and length of residence in the state of any applicant may be established as provided by the rules and regulations of the department: PROVIDED, That if an applicant is unable to establish proof of age or length of residence in the state by any other method he or she may make a statement under oath of his or her age on the date of application or the length of his or her residence in the state, before any judge of the superior court, any judge of the court of appeals, or any justice of the supreme court of the state of Washington, and such statement shall constitute sufficient proof of age of applicant or of length of residence in the state: PROVIDED HOWEVER, That any applicant who willfully makes a false statement as to his or her age or length of residence in the state under oath before a judge of the superior court, a judge of the court of appeals, or a justice of the supreme court, as provided above, shall be guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 367; 1971 c 81 § 137; 1959 c 26 § 74.08.100. Prior: 1949 c 6 § 11; Rem. Supp. 1949 § 9998-33k.]

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

74.08.105 Out-of-state recipients. No assistance payments shall be made to recipients living outside the state of Washington unless in the discretion of the secretary there is sound social reason for such out-of-state payments: PROVIDED, That the period for making such payments when authorized shall not exceed the length of time required to satisfy the residence requirements in the other state in order to be eligible for a grant in the same category of assistance as the recipient was eligible to receive in Washington. [1979 c 141 § 325; 1959 c 26 § 74.08.105. Prior: 1953 c 174 § 39.]

74.08.210 Grants not assignable nor subject to execution. Grants awarded under this title shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of bankruptcy or insolvency law. [1959 c 26 § 74.08.210. Prior: 1941 c 1 § 16; 1935 c 182 § 17; 1933 c 29 § 13; Rem. Supp. 1941 § 9998-49.]

74.08.260 Federal act to control in event of conflict. If any plan of administration of this title submitted to the federal security agency shall be found to be not in conformity with the federal social security act by reason of any conflict of any section, portion, clause or part of this title and the federal social security act, such conflicting section, portion, clause or part of this title is hereby declared to be inoperative to the extent that it is so in conflict, and such finding or determination shall not affect the remainder of this title. [1959 c 26 § 74.08.260. Prior: 1949 c 6 § 17; Rem. Supp. 1949 § 9998-33q.]

74.08.278 Central operating fund established. In order to comply with federal statutes and regulations pertaining to federal matching funds and to provide for the prompt payment of initial grants and adjusting payments of grants the secretary is authorized to make provisions for the cash payment of assistance by the secretary or county administrators by the establishment of a central operating fund. The secretary may establish such a fund with the approval of the state auditor from moneys appropriated to the department for the payment of benefits under RCW 74.62.030 in a sum not to exceed one million dollars. Such funds shall be deposited as agreed upon by the secretary and the state auditor in accordance with the laws regulating the deposits of public funds. Such security shall be required of the depository in connection with the fund as the state treasurer may prescribe. Moneys remaining in the fund shall be returned to the general fund at the end of the biennium, or an accounting of proper expenditures from the fund shall be made to the state auditor. All expenditures from such central operating fund shall be reimbursed out of and charged to the proper program appropriated by the use of such forms and vouchers as are approved by the secretary of the department and the state auditor. Expenditures from such fund shall be audited by the director of financial management and the state auditor from time to time and a report shall be made by the state auditor and the secretary as are required by law. [2011 1st sp.s. c 36 § 28; 2010 1st sp.s. c 8 § 25; 1979 c 141 § 327; 1959 c 26 § 74.08.278. Prior: 1953 c 174 § 42; 1951 c 261 § 1.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.08.280 Payments to persons incapable of self-care—Protective payee services. If any person receiving public assistance has demonstrated an inability to care for oneself or for money, the department may direct the payment of the installments of public assistance to any responsible person, social service agency, or corporation or to a legally appointed guardian for his or her benefit. The state may contract with persons, social service agencies, or corporations approved by the department to provide protective payee services for a fixed amount per recipient receiving protective payee services to cover administrative costs. The department may by rule specify a fee to cover administrative costs. Such fee shall not be withheld from a recipient's grant.

If the state requires the appointment of a guardian for this purpose, the department shall pay all costs and reasonable fees as fixed by the court. [2013 c 23 § 199; 1987 c 406 § 10; 1979 c 141 § 328; 1959 c 26 § 74.08.280. Prior: 1953 c 174 § 40; 1937 c 156 § 7; 1935 c 182 § 10; RRS § 9998-10.]

Living situation presumption: RCW 74.12.255, 74.04.0052.

74.08.283 Services provided to attain self-care. The department is authorized to provide such social and related services as are reasonably necessary to the end that applicants for or recipients of public assistance are helped to attain self-care. [1963 c 228 § 16; 1959 c 26 § 74.08.283. Prior: 1957 c 63 § 6.]

74.08.290 Suspension of payments—Need lapse—Imprisonment—Conviction under RCW 74.08.331. The department is hereby authorized to suspend temporarily the

public assistance granted to any person for any period during which such person is not in need thereof.

If a recipient is convicted of any crime or offense, and punished by imprisonment, no payment shall be made during the period of imprisonment.

If a recipient is convicted of unlawful practices under RCW 74.08.331, no payment shall be made for a period to be determined by the court, but in no event less than six months upon the first conviction and no less than twelve months for a second or subsequent violation. This suspension of public assistance shall apply regardless of whether the recipient is subject to complete or partial confinement upon conviction, or incurs some lesser penalty. [1995 c 379 § 2; 1959 c 26 § 74.08.290. Prior: 1953 c 174 § 38; 1935 c 182 § 12; RRS § 9998-12.]

Finding—1995 c 379: "The legislature finds that welfare fraud damages the state's ability to use its limited resources to help those in need who legitimately qualify for assistance. In addition, it affects the credibility and integrity of the system, promoting disdain for the law.

Persons convicted of committing such fraud should be barred, for a period of time, from receiving additional public assistance." [1995 c 379 § 1.]

74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties. (1) Any person who by means of a willfully false statement, or representation, or impersonation, or a willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance, including medical care, surplus commodities, and food stamps or food stamp benefits transferred electronically, as required by law, or a willful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, including unemployment insurance, or any other change in circumstances affecting the person's eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which the person is not entitled or greater public assistance than that to which he or she is justly entitled is guilty of theft in the first degree under RCW 9A.56.030 and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

(2) Any person who by means of a willfully false statement or representation or by impersonation or other fraudulent device aids or abets in buying, selling, or in any other way disposing of the real property of a recipient of public assistance without the consent of the secretary is guilty of a gross misdemeanor and upon conviction thereof shall be punished by imprisonment for up to three hundred sixty-four days in the county jail or a fine of not to exceed one thousand dollars or by both. [2011 c 96 § 53; 2003 c 53 § 368; 1998 c 79 § 16; 1997 c 58 § 303; 1992 c 7 § 59; 1979 c 141 § 329; 1965 ex.s. c 34 § 1.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Additional notes found at www.leg.wa.gov

74.08.335 Transfers of property to qualify for assistance. Temporary assistance for needy families and benefits under RCW 74.62.030 and 43.185C.220 shall not be granted to any person who has made an assignment or transfer of property for the purpose of rendering himself or herself eligible for the assistance. There is a rebuttable presumption that a person who has transferred or transfers any real or personal property or any interest in property within two years of the date of application for the assistance without receiving adequate monetary consideration therefor, did so for the purpose of rendering himself or herself eligible for the assistance. Any person who transfers property for the purpose of rendering himself or herself eligible for assistance, or any person who after becoming a recipient transfers any property or any interest in property without the consent of the secretary, shall be ineligible for assistance for a period of time during which the reasonable value of the property so transferred would have been adequate to meet the person's needs under normal conditions of living: PROVIDED, That the secretary is hereby authorized to allow exceptions in cases where undue hardship would result from a denial of assistance. [2011 1st sp.s. c 36 § 29; 2010 1st sp.s. c 8 § 26; 1997 c 59 § 13; 1980 c 79 § 2; 1979 c 141 § 330; 1959 c 26 § 74.08.335. Prior: 1953 c 174 § 33.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.08.338 Real property transfers for inadequate consideration. When the consideration for a deed executed and delivered by a recipient is not paid, or when the consideration does not approximate the fair cash market value of the property, such deed shall be prima facie fraudulent as to the state and the department may proceed under RCW 43.20B.660. [1987 c 75 § 40; 1979 c 141 § 331; 1959 c 26 § 74.08.338. Prior: 1953 c 174 § 37.]

Additional notes found at www.leg.wa.gov

74.08.340 No vested rights conferred. All assistance granted under this title shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be enacted, and no recipient shall have any claim for compensation, or otherwise, by reason of his or her assistance being affected in any way by such amending or repealing act. There is no legal entitlement to public assistance. [2013 c 23 § 200; 1997 c 58 § 102; 1959 c 26 § 74.08.340. Prior: 1935 c 182 § 21; RRS § 9998-21.]

Additional notes found at www.leg.wa.gov

74.08.370 Old age assistance grants charged against general fund. All old age assistance grants under this title shall be a charge against and payable out of the general fund of the state. Payment thereof shall be by warrant drawn upon vouchers duly prepared and verified by the secretary of the department of social and health services or his or her official representative. [2013 c 23 § 201; 1973 c 106 § 33; 1959 c 26 § 74.08.370. Prior: 1935 c 182 § 24; RRS § 9998-24. FORMER PART OF SECTION: 1935 c 182 § 25; RRS § 9998-25, now codified as RCW 74.08.375.]

74.08.380 Acceptance of federal act. The state hereby accepts the provisions of that certain act of the congress of the United States entitled, An Act to provide for the general welfare by establishing a system of federal old age benefits, and by enabling the several states to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a social security board; to raise revenue; and for other purposes, and such other act with like or similar objects as may be enacted. [1959 c 26 § 74.08.380. Prior: 1937 c 156 § 12; 1935 c 182 § 26; RRS § 9998-26.]

74.08.390 Research, projects, to effect savings by restoring self-support—Waiver of public assistance requirements. The department of social and health services may conduct research studies, pilot projects, demonstration projects, surveys and investigations for the purpose of determining methods to achieve savings in public assistance programs by means of restoring individuals to maximum self-support and personal independence and preventing social and physical disablement, and for the accomplishment of any of such purposes may employ consultants or enter into contracts with any agency of the federal, state or local governments, nonprofit corporations, universities or foundations.

Pursuant to this authority the department may waive the enforcement of specific statutory requirements, regulations, and standards in one or more counties or on a statewide basis by formal order of the secretary. The order establishing the waiver shall provide alternative methods and procedures of administration, shall not be in conflict with the basic purposes, coverage, or benefits provided by law, shall not be general in scope but shall apply only for the duration of such a project and shall not take effect unless the secretary of health, education and welfare of the United States has agreed, for the same project, to waive the public assistance plan requirements relative to statewide uniformity. [1979 c 141 § 332; 1969 ex.s. c 173 § 7; 1963 c 228 § 17.]

74.08.580 Electronic benefit cards—Prohibited uses—Violations. (1) Any person receiving public assistance is prohibited from using electronic benefit cards or cash obtained with electronic benefit cards:

(a) For the purpose of participating in any of the activities authorized under chapter 9.46 RCW;

(b) For the purpose of parimutuel wagering authorized under chapter 67.16 RCW;

(c) To purchase lottery tickets or shares authorized under chapter 67.70 RCW;

(d) For the purpose of participating in or purchasing any activities located in a tattoo, body piercing, or body art shop licensed under chapter 18.300 RCW;

(e) To purchase cigarettes as defined in RCW 82.24.010 or tobacco products as defined in RCW 82.26.010;

(f) To purchase any items regulated under Title 66 RCW; or

(g) For the purpose of purchasing or participating in any activities in any location listed in subsection (2) of this section.

(2) On or before January 1, 2012, the businesses listed in this subsection must disable the ability of ATM and point-of-sale machines located on their business premises to accept the electronic benefit card. The following businesses are required to comply with this mandate:

(a) Taverns licensed under RCW 66.24.330;

(b) Beer/wine specialty stores licensed under RCW 66.24.371;

(c) Nightclubs licensed under RCW 66.24.600;

(d) Contract liquor stores defined under RCW 66.04.010;

(e) Bail bond agencies regulated under chapter 18.185 RCW;

(f) Gambling establishments licensed under chapter 9.46 RCW;

(g) Tattoo, body piercing, or body art shops regulated under chapter 18.300 RCW;

(h) Adult entertainment venues with performances that contain erotic material where minors under the age of eighteen are prohibited under RCW 9.68A.150; and

(i) Any establishments where persons under the age of eighteen are not permitted.

(3) The department must notify the licensing authority of any business listed in subsection (2) of this section that such business has continued to allow the use of the electronic benefit card in violation of subsection (2) of this section.

(4) Only the recipient, an eligible member of the household, or the recipient's authorized representative may use an electronic benefit card or the benefit and such use shall only be for the respective benefit program purposes. Unless a recipient's family member is an eligible member of the household, the recipient's authorized representative, an alternative cardholder, or has been assigned as a protective payee, no family member may use the benefit card. The recipient shall not sell, or attempt to sell, exchange, or donate an electronic benefit card or any benefits to any other person or entity.

(5) The first violation of subsection (1) of this section by a recipient constitutes a class 4 civil infraction under RCW 7.80.120. Second and subsequent violations of subsection (1) of this section constitute a class 3 civil infraction under RCW 7.80.120.

(a) The department shall notify, in writing, all recipients of electronic benefit cards that any violation of subsection (1) of this section could result in legal proceedings and forfeiture of all cash public assistance.

(b) Whenever the department receives notice that a person has violated subsection (1) of this section, the department shall notify the person in writing that the violation could result in legal proceedings and forfeiture of all cash public assistance.

(c) The department shall assign a protective payee to the person receiving public assistance who violates subsection (1) of this section two or more times.

(6) In assigning a personal identification number to an electronic benefit card, the department shall not routinely use any sequence of numbers that appear on the card except in circumstances resulting from in-state or national disasters. Personal identification numbers assigned to electronic benefit cards issued to support the distribution of benefits when there is a disaster may include a sequence of numbers that appears on the card. [2012 c 253 § 2; 2011 1st sp.s. c 42 § 14; 2002 c 252 § 1.]

Finding—Purpose—2012 c 253: "The legislature finds that fraud associated with public assistance programs is a significant problem in the state of Washington. Therefore, the legislature encourages the office of fraud and accountability within the department of social and health services to coordinate with the office of the state auditor and the *department of early learning to improve the prevention, detection, and prosecution of fraudulent activity taking place in public assistance programs. It is the purpose of this act to significantly reduce fraud and to ensure that public assistance dollars reach the intended populations in need." [2012 c 253 § 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.

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

74.08.582 Electronic benefit cards—Names of two or more persons. A person who has in his or her possession or under his or her control electronic benefit cards issued in the names of two or more persons and who is not authorized by those persons to have any of the cards in his or her possession is guilty of a misdemeanor. [2012 c 253 § 3.]

Findings—Purpose—2012 c 253: See note following RCW 74.08.580.

74.08.900 Limited application. Nothing in this chapter except RCW *74.08.070 and 74.08.080 applies to chapter 74.50 RCW. [1989 c 3 § 3.]

***Reviser's note:** RCW 74.08.070 was repealed by 1989 c 175 § 185, effective July 1, 1989.

Chapter 74.08A RCW
WASHINGTON WORKFIRST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sections

74.08A.010 Time limits—Transitional food assistance. (1) A family that includes an adult who has received temporary assistance for needy families for sixty months after July 27, 1997, shall be ineligible for further temporary assistance for needy families assistance.

(2) For the purposes of applying the rules of this section, the department shall count any month in which an adult family member received a temporary assistance for needy families cash assistance grant unless the assistance was provided when the adult family member was a minor child and not the head of the household or married to the head of the household.

(3) The department shall adopt regulations to apply the sixty-month time limit to households in which a parent is in the home and ineligible for temporary assistance for needy families. Any regulations shall be consistent with federal funding requirements.

(4) The department shall refer recipients who require specialized assistance to appropriate department programs, crime victims' programs through the department of commerce, or the crime victims' compensation program of the department of labor and industries.

(5)(a) The department shall add to adopted rules related to temporary assistance for needy families time limit extensions, the following criteria by which the department shall exempt a recipient and the recipient's family from the application of subsection (1) of this section:

(i) By reason of hardship, including if the recipient is a homeless person as described in RCW 43.185C.010; or

(ii) If the family includes an individual who meets the family violence options of section 402(A)(7) of Title IVA of the federal social security act as amended by P.L. 104-193.

(b) Policies related to circumstances under which a recipient will be exempted from the application of subsection (1) or (3) of this section shall treat adults receiving benefits on their own behalf, and parents receiving benefits on behalf of their child similarly, unless required otherwise under federal law.

(6) The department shall not exempt a recipient and his or her family from the application of subsection (1) or (3) of this section until after the recipient has received fifty-two months of assistance under this chapter.

(7) The department shall provide transitional food assistance for a period of five months to a household that ceases to receive temporary assistance for needy families assistance

and is not in sanction status. If necessary, the department shall extend the household's basic food certification until the end of the transition period. [2019 c 343 § 2; 2011 1st sp.s. c 42 § 6; 2004 c 54 § 4; 1997 c 58 § 103.]

Prospective application—2019 c 343: See note following RCW 74.08.025.

Effective date—2011 1st sp.s. c 42 § 6: "Section 6 of this act takes effect September 1, 2011." [2011 1st sp.s. c 42 § 29.]

Findings—Intent—2011 1st sp.s. c 42: See note following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Findings—Conflict with federal requirements—2004 c 54: See notes following RCW 28A.235.160.

74.08A.020 Electronic benefit transfer. By October 2002, the department shall develop and implement an electronic benefit transfer system to be used for the delivery of public assistance benefits, including without limitation, food assistance.

The department shall comply with P.L. 104-193, and shall cooperate with relevant federal agencies in the design and implementation of the electronic benefit transfer system. [1997 c 58 § 104.]

74.08A.030 Provision of services by religiously affiliated organizations—Rules. (1) The department shall allow religiously affiliated organizations to provide services to families receiving temporary assistance for needy families on the same basis as any other nongovernmental provider, without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under chapter 74.12 RCW.

(2) The department shall adopt rules implementing this section, and the applicable sections of P.L. 104-193 related to services provided by charitable, religious, or private organizations. [1997 c 58 § 106.]

74.08A.039 Income eligibility—Federal supplemental security income. In determining the income eligibility of an applicant or recipient for temporary assistance for needy families or WorkFirst, the department shall not count the federal supplemental security income received by a household member. [2011 1st sp.s. c 42 § 5.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

74.08A.040 Indian tribes—Program access—Funding—Rules. The department shall (1) provide eligible Indian tribes ongoing, meaningful opportunities to participate in the development, oversight, and operation of the state temporary assistance for needy families program; (2) certify annually that it is providing equitable access to the state temporary assistance for needy families program to Indian people whose tribe is not administering a tribal temporary assistance for needy families program; (3) coordinate and cooperate with eligible Indian tribes that elect to operate a tribal temporary assistance for needy families program as provided for in P.L. 104-193; (4) upon approval by the secretary of the federal department of health and human services of a tribal temporary assistance for needy families program, transfer a fair and equitable amount of the state maintenance of effort funds to the eligible Indian tribe; and (5) establish rules related to the operation of this section and RCW 74.08A.050, covering, at a minimum, appropriate uses of state maintenance of effort funds and annual reports on program operations. The legislature shall specify the amount of state maintenance of effort funds to be transferred in the biennial appropriations act. [1997 c 58 § 107.]

74.08A.050 Indian tribes—Tribal program—Fiscal year. An eligible Indian tribe exercising its authority under P.L. 104-193 to operate a tribal temporary assistance for needy families program shall operate the program on a state fiscal year basis. If a tribe decides to cancel a tribal temporary assistance for needy families program, it shall notify the department no later than ninety days prior to the start of the state fiscal year. [1997 c 58 § 108.]

74.08A.060 Food stamp work requirements. Single adults without dependents between eighteen and fifty years of age shall comply with federal food stamp work requirements as a condition of eligibility. The department may exempt any counties or subcounty areas from the federal food stamp work requirements in P.L. 104-193, unless the department receives written evidence of official action by a county or subcounty governing entity, taken after noticed consideration, that indicates that a county or subcounty area chooses not to use an exemption to the federal food stamp work requirements. [1997 c 58 § 110.]

74.08A.100 Immigrants—Eligibility. The state shall exercise its option under P.L. 104-193 to continue services to legal immigrants under temporary assistance for needy families, medicaid to the extent allowed by federal law, the state's basic health plan as provided in chapter 70.47 RCW, and social services block grant programs. Eligibility for these benefits for legal immigrants arriving after August 21, 1996, is limited to those families where the parent, parents, or legal guardians have been in residence in Washington state for a period of twelve consecutive months before making their application for assistance. Legal immigrants who lose benefits under the supplemental security income program as a result of P.L. 104-193 are immediately eligible for benefits under the state's general assistance-unemployable program. The department shall redetermine income and resource eligibility at least annually, in accordance with existing state policy. [2002 c 366 § 1; 1997 c 57 § 1.]

Additional notes found at www.leg.wa.gov

74.08A.110 Immigrants—Sponsor deeming. (1) Except as provided in subsection (4) of this section, qualified aliens and aliens permanently residing under color of law shall have their eligibility for assistance redetermined.

(2) In determining the eligibility and the amount of benefits of a qualified alien or an alien permanently residing under color of law for public assistance under this title, the income and resources of the alien shall be deemed to include the income and resources of any person and his or her spouse who executed an affidavit of support pursuant to section 213A of the federal immigration and naturalization act on behalf of the alien for a period of five years following the

execution of that affidavit of support. The deeming provisions of this subsection shall be waived if the sponsor dies or is permanently incapacitated during the period the affidavit of support is valid.

(3) As used in this section, "qualified alien" has the meaning provided it in P.L. 104-183.

(4)(a) Qualified aliens specified under sections 403, 412, and 552 (e) and (f), subtitle B, Title IV, of P.L. 104-193 and in P.L. 104-208, are exempt from this section.

(b) Qualified aliens who served in the armed forces of an allied country, or were employed by an agency of the federal government, during a military conflict between the United States of America and a military adversary are exempt from the provisions of this section.

(c) Qualified aliens who are victims of domestic violence and petition for legal status under the federal violence against women act are exempt from the provisions of this section. [1997 c 57 § 2.]

Additional notes found at www.leg.wa.gov

74.08A.120 Immigrants—Food assistance. (1) The department may establish a food assistance program for legal immigrants who are ineligible for the federal food stamp program.

(2) The rules for the state food assistance program shall follow exactly the rules of the federal food stamp program except for the provisions pertaining to immigrant status.

(3) The benefit under the state food assistance program shall be established by the legislature in the biennial operating budget.

(4) The department may enter into a contract with the United States department of agriculture to use the existing federal food stamp program coupon system for the purposes of administering the state food assistance program.

(5) In the event the department is unable to enter into a contract with the United States department of agriculture, the department may issue vouchers to eligible households for the purchase of eligible foods at participating retailers. [1999 c 120 § 4; 1997 c 57 § 3.]

Additional notes found at www.leg.wa.gov

74.08A.130 Immigrants—Naturalization facilitation. The department shall make an affirmative effort to identify and proactively contact legal immigrants receiving public assistance to facilitate their applications for naturalization. The department shall obtain a complete list of legal immigrants in Washington who are receiving correspondence regarding their eligibility from the social security administration. The department shall inform immigrants regarding how citizenship may be attained. In order to facilitate the citizenship process, the department shall coordinate and contract, to the extent necessary, with existing public and private resources and shall, within available funds, ensure that those immigrants who qualify to apply for naturalization are referred to or otherwise offered classes. The department shall assist eligible immigrants in obtaining appropriate test exemptions, and other exemptions in the naturalization process, to the extent permitted under federal law. [2009 c 518 § 6; 1997 c 58 § 204.]

74.08A.210 Diversion program—Emergency assistance. (1) In order to prevent some families from developing dependency on temporary assistance for needy families, the department shall make available to qualifying applicants a diversion program designed to provide brief, emergency assistance for families in crisis whose income and assets would otherwise qualify them for temporary assistance for needy families.

(2) Diversion assistance may include cash or vouchers in payment for the following needs:

(a) Child care;

(b) Housing assistance;

(c) Transportation-related expenses;

(d) Food;

(e) Medical costs for the recipient's immediate family;

(f) Employment-related expenses which are necessary to keep or obtain paid unsubsidized employment.

(3) Diversion assistance is available once in each twelve-month period for each adult applicant. Recipients of diversion assistance are not included in the temporary assistance for needy families program.

(4) Diversion assistance may not exceed one thousand five hundred dollars for each instance.

(5) To be eligible for diversion assistance, a family must otherwise be eligible for temporary assistance for needy families.

(6) Families ineligible for temporary assistance for needy families or benefits under RCW 74.62.030 due to sanction, noncompliance, the lump sum income rule, or any other reason are not eligible for diversion assistance.

(7) Families must provide evidence showing that a bona fide need exists according to subsection (2) of this section in order to be eligible for diversion assistance.

An adult applicant may receive diversion assistance of any type no more than once per twelve-month period. If the recipient of diversion assistance is placed on the temporary assistance for needy families program within twelve months of receiving diversion assistance, the prorated dollar value of the assistance shall be treated as a loan from the state, and recovered by deduction from the recipient's cash grant. [2011 1st sp.s. c 36 § 30; 2010 1st sp.s. c 8 § 27; 1997 c 58 § 302.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.08A.220 Individual development accounts—Microcredit and microenterprise approaches—Rules. The department shall carry out a program to fund individual development accounts established by recipients eligible for assistance under the temporary assistance for needy families program.

(1) An individual development account may be established by or on behalf of a recipient eligible for assistance provided under the temporary assistance for needy families program operated under this title for the purpose of enabling the recipient to accumulate funds for a qualified purpose described in subsection (2) of this section.

(2) A qualified purpose as described in this subsection is one or more of the following, as provided by the qualified entity providing assistance to the individual:

(a) Postsecondary expenses paid from an individual development account directly to an eligible educational institution;

(b) Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time home buyer, if paid from an individual development account directly to the persons to whom the amounts are due;

(c) Amounts paid from an individual development account directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses.

(3) A recipient may only contribute to an individual development account such amounts as are derived from earned income, as defined in section 911(d)(2) of the internal revenue code of 1986.

(4) The department shall establish rules to ensure funds held in an individual development account are only withdrawn for a qualified purpose as provided in this section.

(5) An individual development account established under this section shall be a trust created or organized in the United States and funded through periodic contributions by the establishing recipient and matched by or through a qualified entity for a qualified purpose as provided in this section.

(6) For the purpose of determining eligibility for any assistance provided under this title, all funds in an individual development account under this section shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

(7) The department shall adopt rules authorizing the use of organizations using microcredit and microenterprise approaches to assisting low-income families to become financially self-sufficient.

(8) The department shall adopt rules implementing the use of individual development accounts by recipients of temporary assistance for needy families.

(9) For the purposes of this section, "eligible educational institution," "postsecondary educational expenses," "qualified acquisition costs," "qualified business," "qualified business capitalization expenses," "qualified expenditures," "qualified first-time home buyer," "date of acquisition," "qualified plan," and "qualified principal residence" include the meanings provided for them in P.L. 104-193. [1997 c 58 § 307.]

74.08A.230 Earnings disregards and earned income cutoffs. (1) In addition to their monthly benefit payment, a family may earn and keep one-half of its earnings during every month it is eligible to receive assistance under this section.

(2) In no event may a family be eligible for temporary assistance for needy families if its monthly gross earned income exceeds the maximum earned income level as set by the department. In calculating a household's gross earnings, the department shall disregard the earnings of a minor child who is:

(a) A full-time student; or

(b) A part-time student carrying at least half the normal school load and working fewer than thirty-five hours per week. [1997 c 58 § 308.]

74.08A.240 Noncustodial parents in work programs. The department may provide Washington WorkFirst activities or make cross-referrals to existing programs to qualifying noncustodial parents of children receiving temporary assistance for needy families who are unable to meet their child support obligations. Services authorized under this section shall be provided within available funds. [1997 c 58 § 310.]

74.08A.250 "Work activity" defined. Unless the context clearly requires otherwise, as used in this chapter, "work activity" means:

(1) Unsubsidized paid employment in the private or public sector;

(2) Subsidized paid employment in the private or public sector, including employment through the state or federal work-study program for a period not to exceed twenty-four months;

(3) Work experience, including:

(a) An internship or practicum, that is paid or unpaid and is required to complete a course of vocational training or to obtain a license or certificate in a high-demand occupation, as determined by the employment security department. No internship or practicum shall exceed twelve months; or

(b) Work associated with the refurbishing of publicly assisted housing, if sufficient paid employment is not available;

(4) On-the-job training;

(5) Job search and job readiness assistance;

(6) Community service programs, including a recipient's voluntary service at a child care or preschool facility licensed under chapter 43.216 RCW or an elementary school in which his or her child is enrolled;

(7) Vocational educational training, not to exceed twelve months with respect to any individual except that this twelve-month limit may be increased to twenty-four months subject to funding appropriated specifically for this purpose;

(8) Job skills training directly related to employment;

(9) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536;

(10) Satisfactory attendance at secondary school or in a course of study leading to a high school equivalency certificate as provided in RCW 28B.50.536, in the case of a recipient who has not completed secondary school or received such a certificate;

(11) The provision of child care services to an individual who is participating in a community service program;

(12) Internships, that shall be paid or unpaid work experience performed by an intern in a business, industry, or government or nongovernmental agency setting;

(13) Practicums, which include any educational program in which a student is working under the close supervision of a professional in an agency, clinic, or other professional practice setting for purposes of advancing their skills and knowledge;

(14) Services required by the recipient under RCW 74.08.025(2) and 74.08A.010(4) to become employable;

(15) Financial literacy activities designed to be effective in assisting a recipient in becoming self-sufficient and financially stable; and

(16) Parent education services or programs that support development of appropriate parenting skills, life skills, and employment-related competencies. [2019 c 343 § 5; 2017 c 156 § 1; 2013 c 39 § 27; 2011 1st sp.s. c 42 § 8; 2009 c 353 § 6; 2006 c 107 § 2; 2000 c 10 § 1; 1997 c 58 § 311.]

Prospective application—2019 c 343: See note following RCW 74.08.025.

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Findings—Intent—2006 c 107: "The legislature finds that for a variety of reasons, many citizens may lack the basic financial knowledge necessary to spend their money wisely, save for the future, and manage money challenges, such as a job loss, financing a college education, or a catastrophic injury. The legislature also finds that financial literacy is an essential element in achieving financial stability and self-sufficiency. The legislature intends to encourage participation in financial literacy training by WorkFirst participants, in order to promote their ability to make financial decisions that will contribute to their long-term financial well-being." [2006 c 107 § 1.]

Additional notes found at www.leg.wa.gov

74.08A.260 Work activity—Referral—Individual responsibility plan—Refusal to work. (1) Each recipient shall be assessed after determination of program eligibility and before referral to job search. Assessments shall be based upon factors that are critical to obtaining employment, including but not limited to education, availability of child care, history of family violence, history of substance abuse, and other factors that affect the ability to obtain employment. Assessments may be performed by the department or by a contracted entity. The assessment shall be based on a uniform, consistent, transferable format that will be accepted by all agencies and organizations serving the recipient.

(2) Based on the assessment, an individual responsibility plan shall be prepared that: (a) Sets forth an employment goal and a plan for maximizing the recipient's success at meeting the employment goal; (b) considers WorkFirst educational and training programs from which the recipient could benefit; (c) contains the obligation of the recipient to participate in the program by complying with the plan; (d) moves the recipient into full-time WorkFirst activities as quickly as possible; and (e) describes the services available to the recipient either during or after WorkFirst to enable the recipient to obtain and keep employment and to advance in the workplace and increase the recipient's wage earning potential over time.

(3) Recipients who are not engaged in work and work activities, and do not qualify for a good cause exemption under RCW 74.08A.270, shall engage in self-directed service as provided in RCW 74.08A.330.

(4) If a recipient refuses to engage in work and work activities required by the department, the family's grant shall be reduced by the recipient's share, and may, if the department determines it appropriate, be terminated.

(5) The department may waive the penalties required under subsection (4) of this section, subject to a finding that the recipient refused to engage in work for good cause provided in RCW 74.08A.270.

(6) In consultation with the recipient, the department or contractor shall place the recipient into a work activity that is available in the local area where the recipient resides.

(7) Assessments conducted under this section shall include a consideration of the potential benefit to the recipient of engaging in financial literacy activities. The department shall consider the options for financial literacy activities available in the community, including information and resources available through the financial education public-private partnership created under RCW 28A.300.450. The department may authorize up to ten hours of financial literacy activities as a core activity or an optional activity under WorkFirst.

(8) Subsections (2) through (6) of this section are suspended for a recipient who is a parent or other relative personally providing care for a child under the age of two years. This suspension applies to both one and two parent families. However, both parents in a two-parent family cannot use the suspension during the same month. Nothing in this subsection shall prevent a recipient from participating in the WorkFirst program on a voluntary basis. [2018 c 126 § 5; 2018 c 58 § 8; 2017 3rd sp.s. c 21 § 1; 2011 1st sp.s. c 42 § 2; 2009 c 85 § 2; 2006 c 107 § 3; 2003 c 383 § 1; 1997 c 58 § 313.]

Reviser's note: This section was amended by 2018 c 58 § 8 and by 2018 c 126 § 5, 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).

Findings—Intent—2018 c 126: See note following RCW 74.08A.505.

Effective date—2018 c 58: See note following RCW 28A.655.080.

Findings—Intent—2011 1st sp.s. c 42: "The legislature finds that stable and sustainable employment is the key goal of the WorkFirst and temporary assistance for needy families programs. Achieving stable and sustainable employment is a developmental process that takes time, effort, and engagement. In times of fiscal challenge, temporary assistance for needy families and WorkFirst resources must be invested in program elements that produce the best results for low-income families and the state of Washington.

The legislature further finds that the core tenets that are the foundation of Washington state's WorkFirst program are: (1) Achieving stable and successful employment; (2) recognizing the critical role that participants play in their children's development, healthy growth, and promotion of family stability; (3) developing strategies founded on the principle that WorkFirst is a transitional, not long-term, program to assist families on the pathway to self-sufficiency while holding them accountable; and (4) leveraging resources outside the funding for temporary assistance for needy families is crucial to achieving WorkFirst goals. It is the intent of the legislature, using evidence-based and research-based practices, to develop a road map to self-sufficiency for WorkFirst participants and temporary assistance for needy families recipients.

The legislature further finds that parents are responsible for the support of their children and that they have up to sixty months of receipt of temporary assistance for needy families benefits, absent any applicable hardship extension, to achieve stable and sustainable employment or find other means to support their family. It is the intent of the legislature to apply a sixty-month time limit to the temporary assistance for needy families program, including households in which a parent is in the home and ineligible for temporary assistance for needy families. The legislature intends that hardship extensions be applied to families subject to time limits." [2011 1st sp.s. c 42 § 1.]

Effective date—2011 1st sp.s. c 42: "Except for section 6 of this act, 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, 2011." [2011 1st sp.s. c 42 § 28.]

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Findings—Intent—Effective date—2006 c 107: See notes following RCW 74.08A.250.

74.08A.270 Good cause. (1) Good cause reasons for failure to participate in WorkFirst program components include: (a) Situations where the recipient is a parent or other relative personally providing care for a child under the age of six years, and formal or informal child care, or day care for an incapacitated individual living in the same home as a dependent child, is necessary for an individual to participate or continue participation in the program or accept employment, and such care is not available, and the department fails to provide such care; or (b) the recipient is a parent with a child under the age of two years.

(2) A parent claiming a good cause exemption from WorkFirst participation under subsection (1)(b) of this section may be required to participate in one or more of the following, up to a maximum total of twenty hours per week, if such treatment, services, or training is indicated by the comprehensive evaluation or other assessment:

(a) Mental health treatment;

(b) Alcohol or drug treatment;

(c) Domestic violence services; or

(d) Parenting education or parenting skills training, if available.

(3) The department shall: (a) Work with a parent claiming a good cause exemption under subsection (1)(b) of this section to identify and access programs and services designed to improve parenting skills and promote child well-being, including but not limited to home visitation programs and services; and (b) provide information on the availability of home visitation services to temporary assistance for needy families caseworkers, who shall inform clients of the availability of the services. If desired by the client, the caseworker shall facilitate appropriate referrals to providers of home visitation services.

(4) Nothing in this section shall prevent a recipient from participating in the WorkFirst program on a voluntary basis.

(5) A parent is eligible for a good cause exemption under subsection (1)(b) of this section for a maximum total of twenty-four months over the parent's lifetime. [2017 3rd sp.s. c 21 § 2; 2007 c 289 § 1; 2002 c 89 § 1; 1997 c 58 § 314.]

74.08A.275 Employability screening. Each recipient approved to receive temporary assistance for needy families shall be subject to an employability screening under RCW 74.08A.260 after determination of program eligibility and before referral to job search. If the employability screening determines the recipient is not employable, or meets the criteria specified in RCW 74.08A.270 for a good cause exemption to work requirements, the department shall defer the job search requirement under RCW 74.08A.285. [2003 c 383 § 2; 1999 c 340 § 1.]

74.08A.280 Program goal—Collaboration to develop work programs—Contracts—Service areas—Regional plans. (1) The legislature finds that moving those eligible for assistance to self-sustaining employment is a goal of the WorkFirst program. It is the intent of WorkFirst to aid a participant's progress to self-sufficiency by allowing flexibility within the statewide program to reflect community resources, the local characteristics of the labor market, and the composition of the caseload. Program success will be enhanced through effective coordination at regional and local levels, involving employers, labor representatives, educators, community leaders, local governments, and social service providers.

(2) The department, through its regional offices, shall collaborate with employers, recipients, frontline workers, educational institutions, labor, private industry councils, the workforce training and education coordinating board, community rehabilitation employment programs, employment and training agencies, local governments, the employment security department, and community action agencies to develop work programs that are effective and work in their communities. For planning purposes, the department shall collect and make accessible to regional offices successful work program models from around the United States, including the employment partnership program, apprenticeship programs, microcredit, microenterprise, self-employment, and W-2 Wisconsin works. Work programs shall incorporate local volunteer citizens in their planning and implementation phases to ensure community relevance and success.

(3) To reduce administrative costs and to ensure equal statewide access to services, the department may develop contracts for statewide welfare-to-work services. These statewide contracts shall support regional flexibility and ensure that resources follow local labor market opportunities and recipients' needs.

(4) The secretary shall establish WorkFirst service areas for purposes of planning WorkFirst programs and for distributing WorkFirst resources. Service areas shall reflect department regions.

(5) By July 31st of each odd-numbered year, a plan for the WorkFirst program shall be developed for each region. The plan shall be prepared in consultation with local and regional sources, adapting the statewide WorkFirst program to achieve maximum effect for the participants and the communities within which they reside. Local consultation shall include to the greatest extent possible input from local and regional planning bodies for social services and workforce development. The regional and local administrator shall consult with employers of various sizes, labor representatives, training and education providers, program participants, economic development organizations, community organizations, tribes, and local governments in the preparation of the service area plan.

(6) The secretary has final authority in plan approval or modification. Regional program implementation may deviate from the statewide program if specified in a service area plan, as approved by the secretary. [1997 c 58 § 315.]

74.08A.285 Job search instruction and assistance. The WorkFirst program operated by the department to meet the federal work requirements specified in P.L. 104-193 shall contain a job search component. The component shall consist of instruction on how to secure a job and assisted job search activities to locate and retain employment. Nonexempt recipients of temporary assistance for needy families shall participate in an initial job search for no more than twelve consecutive weeks. Each recipient shall receive a work skills assessment upon referral to the job search program. The work skills assessment shall include but not be limited to education, employment history, employment strengths, and job skills. The recipient's ability to obtain employment will be reviewed

periodically thereafter and, if it is clear at any time that further participation in a job search will not be productive, the department shall assess the recipient pursuant to RCW 74.08A.260. The department shall refer recipients unable to find employment through the initial job search period to work activities that will develop their skills or knowledge to make them more employable, including additional job search and job readiness assistance. [2003 c 383 § 3; 1998 c 89 § 1.]

74.08A.290 Competitive performance-based contracting—Evaluation of contracting practices—Contracting strategies. (1) It is the intent of the legislature that the department is authorized to engage in competitive contracting using performance-based contracts to provide all work activities authorized in chapter 58, Laws of 1997, including the job search component authorized in *section 312 of this act.

(2) The department may use competitive performance-based contracting to select which vendors will participate in the WorkFirst program. Performance-based contracts shall be awarded based on factors that include but are not limited to the criteria listed in RCW 74.08A.410, past performance of the contractor, demonstrated ability to perform the contract effectively, financial strength of the contractor, and merits of the proposal for services submitted by the contractor. Contracts shall be made without regard to whether the contractor is a public or private entity.

(3) The department may contract for an evaluation of the competitive contracting practices and outcomes to be performed by an independent entity with expertise in government privatization and competitive strategies. The evaluation shall include quarterly progress reports to the fiscal committees of the legislature and to the governor, starting at the first quarter after the effective date of the first competitive contract and ending two years after the effective date of the first competitive contract.

(4) The department shall seek independent assistance in developing contracting strategies to implement this section. Assistance may include but is not limited to development of contract language, design of requests for proposal, developing full cost information on government services, evaluation of bids, and providing for equal competition between private and public entities. [1997 c 58 § 316.]

***Reviser's note:** Section 312 of this act was vetoed by the governor.

74.08A.300 Placement bonuses. In the case of service providers that are not public agencies, initial placement bonuses of no greater than five hundred dollars may be provided by the department for service entities responsible for placing recipients in an unsubsidized job for a minimum of twelve weeks, and the following additional bonuses shall also be provided:

(1) A percent of the initial bonus if the job pays double the minimum wage;

(2) A percent of the initial bonus if the job provides health care;

(3) A percent of the initial bonus if the job includes employer-provided child care needed by the recipient; and

(4) A percent of the initial bonus if the recipient is continuously employed for two years. [1997 c 58 § 317.]

74.08A.310 Self-employment assistance—Training and placement programs. The department shall:

(1) Notify recipients of temporary assistance for needy families that self-employment is one method of leaving state assistance. The department shall provide its regional offices, recipients of temporary assistance for needy families, and any contractors providing job search, training, or placement services notification of programs available in the state for entrepreneurial training, technical assistance, and loans available for start-up businesses;

(2) Provide recipients of temporary assistance for needy families and service providers assisting such recipients through training and placement programs with information it receives about the skills and training required by firms locating in the state;

(3) Encourage recipients of temporary assistance for needy families that are in need of basic skills to seek out programs that integrate basic skills training with occupational training and workplace experience. [1997 c 58 § 324.]

74.08A.320 Wage subsidy program. The department shall establish a wage subsidy program to be known as the community jobs program for recipients of temporary assistance for needy families who have barriers to employment, lack experience and attachment to the job force, or have been unsuccessful in securing employment leading to family self-sufficiency. The department shall give preference in job placements to private sector employers that have agreed to participate in the wage subsidy program. The department shall identify characteristics of employers who can meet the employment goals stated in RCW 74.08A.410. The department shall use these characteristics in identifying which employers may participate in the program. The department shall adopt rules for the participation of recipients of temporary assistance for needy families in the wage subsidy program. Participants in the program established under this section may not be employed if: (1) The employer has terminated the employment of any current employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with the participant; or (2) the participant displaces or partially displaces current employees. Employers providing positions created under this section shall meet the requirements of chapter 49.46 RCW. This section shall not diminish or result in the infringement of obligations or rights under chapters 41.06, 41.56, and 49.36 RCW and the national labor relations act, 29 U.S.C. Ch. 7. The department shall establish such local and statewide advisory boards, including business and labor representatives, as it deems appropriate to assist in the implementation of the wage subsidy program. Once the recipient is hired, the wage subsidy shall be authorized for up to nine months. [2010 c 273 § 5; 1997 c 58 § 325.]

74.08A.330 Community service program. The department shall establish the community service program to provide the experience of work for recipients of public assistance. The program is intended to promote a strong work ethic for participating public assistance recipients. Under this program, public assistance recipients are required to volunteer to work for charitable nonprofit organizations and public agencies, or engage in another activity designed to benefit the

recipient, the recipient's family, or the recipient's community, as determined by the department on a case-by-case basis. Participants in a community service or work experience program established by this chapter are deemed employees for the purpose of chapter 49.17 RCW. The cost of premiums under Title 51 RCW shall be paid for by the department for participants in a community service or work experience program. Participants in a community service or work experience program may not be placed if: (1) An employer has terminated the employment of any current employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with the participant; or (2) the participant displaces or partially displaces current employees. [1997 c 58 § 326.]

74.08A.341 Program constraints—Expenditures. The department of social and health services shall operate the Washington WorkFirst program authorized under RCW 74.08A.210 through 74.08A.330, 43.330.145, 43.216.710, and 74.25.040, and chapter 74.12 RCW within the following constraints:

(1) The program shall be operated within amounts appropriated by the legislature and consistent with policy established by the legislature to achieve self-sufficiency through work and the following additional outcomes:

(a) Recipients' economic status is improving through wage progression, job retention, and educational advancement;

(b) Recipients' status regarding housing stability, medical and behavioral health, and job readiness is improving;

(c) The well-being of children whose caretaker is receiving benefits on their behalf is improving with respect to child welfare and educational achievement.

(2)(a) The department shall create a budget structure that allows for more transparent tracking of program spending. The budget structure shall outline spending for the following: Temporary assistance for needy family grants, WorkFirst activities, and administration of the program.

(b) Each biennium, the department shall establish a biennial spending plan, using the budget structure created in (a) of this subsection, for this program and submit the plan to the legislative fiscal committees and the legislative-executive WorkFirst poverty reduction oversight task force no later than July 1st of every odd-numbered year, beginning on July 1, 2013. The department shall update the legislative fiscal committees and the task force on the spending plan if modifications are made to the plan previously submitted to the legislature and the task force for that biennium.

(c) The department also shall provide expenditure reports to the fiscal committees of the legislature and the legislative-executive WorkFirst poverty reduction oversight task force beginning September 1, 2012, and on a quarterly basis thereafter. If the department determines, based upon quarterly expenditure reports, that expenditures will exceed funding at the end of the fiscal year, the department shall take those actions necessary to ensure that services provided under this chapter are available only to the extent of and consistent with appropriations in the operating budget and policy established by the legislature following notification provided in (b) of this subsection.

(3) No more than fifteen percent of the temporary assistance for needy families block grant, the federal child care funds, and qualifying state expenditures may be spent for administrative purposes. For purposes of this subsection, "administrative purposes" does not include expenditures for information technology and computerization needed for tracking and monitoring required by P.L. 104-193.

(4) The department shall expend funds appropriated for work activities, as defined in RCW 74.08A.250, or for other services provided to WorkFirst recipients, as authorized under RCW 74.08A.290. [2018 c 126 § 6; 2018 c 52 § 5; 2012 c 217 § 1.]

Reviser's note: This section was amended by 2018 c 52 § 5 and by 2018 c 126 § 6, 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).

Findings—Intent—2018 c 126: See note following RCW 74.08A.505.

Effective date—Intent—Finding—2018 c 52: See notes following RCW 43.216.909.

Effective date—2012 c 217: "This act takes effect July 1, 2012." [2012 c 217 § 4.]

74.08A.350 Questionnaires—Job opportunities for welfare recipients. The department of social and health services shall create a questionnaire, asking businesses for information regarding available and upcoming job opportunities for welfare recipients. The department of revenue shall include the questionnaire in a regular quarterly mailing. The department of social and health services shall receive responses and use the information to develop work activities in the areas where jobs will be available. [1997 c 58 § 1007.]

74.08A.380 Teen parents—Education requirements. All applicants under the age of eighteen years who are approved for assistance and, within one hundred eighty days after the date of federal certification of the Washington temporary assistance for needy families program, all unmarried minor parents or pregnant minor applicants shall, as a condition of receiving benefits, actively progress toward the completion of a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536. [2013 c 39 § 28; 1997 c 58 § 503.]

74.08A.400 Outcome measures—Intent. It is the intent of the legislature that the Washington WorkFirst program focus on work and on personal responsibility for recipients. The program shall be evaluated among other evaluations, through a limited number of outcome measures designed to hold each community service office and economic services region accountable for program success. [1997 c 58 § 701.]

Additional notes found at www.leg.wa.gov

74.08A.410 Outcome measures—Development—Benchmarks. (1) The WorkFirst program shall develop outcome measures for use in evaluating the WorkFirst program authorized in chapter 58, Laws of 1997, which may include but are not limited to:

(a) Caseload reduction, including data for participants who exit: (i) Due to increased income; (ii) to employment; (iii) at the participant's request; or (iv) for other reasons;

(b) Recidivism to caseload after two years;

(c) Employment;

(d) Job retention;

(e) Earnings;

(f) Wage progression;

(g) Reduction in average grant through increased recipient earnings;

(h) Placement of recipients into private sector, unsubsidized jobs; and

(i) Outcomes for sanctioned and time-limited families.

(2) The department shall require that contractors for WorkFirst services collect outcome measure information and report outcome measures to the department regularly. The department shall develop benchmarks that compare outcome measure information from all contractors to provide a clear indication of the most effective contractors. Benchmark information shall be published quarterly and provided to the legislature, the governor, the legislative-executive WorkFirst poverty reduction oversight task force, and all contractors for WorkFirst services. [2019 c 343 § 3; 1997 c 58 § 702.]

Prospective application—2019 c 343: See note following RCW 74.08.025.

Additional notes found at www.leg.wa.gov

74.08A.411 Outcome measures—Data—Report to the legislature and the legislative-executive WorkFirst poverty reduction oversight task force. The department shall continue to implement WorkFirst program improvements that are designed to achieve progress against outcome measures specified in RCW 74.08A.410. Outcome data regarding job retention and wage progression shall be reported quarterly to the appropriate fiscal and policy committees of the legislature and to the legislative-executive WorkFirst poverty reduction oversight task force for families who leave assistance for any reason, measured after twelve months, twenty-four months, and thirty-six months. The department shall also report the percentage of families who have returned to temporary assistance for needy families after twelve months, twenty-four months, and thirty-six months. The department shall make every effort to maximize vocational training, as allowed by federal and state requirements. [2019 c 343 § 4; 2009 c 85 § 3.]

Prospective application—2019 c 343: See note following RCW 74.08.025.

74.08A.420 Outcome measures—Evaluations—Awarding contracts—Bonuses. Every WorkFirst office, region, contract, employee, and contractor shall be evaluated using the criteria in RCW 74.08A.410. The department shall award contracts to the highest performing entities according to the criteria in RCW 74.08A.410. The department may provide for bonuses to offices, regions, and employees with the best outcomes according to measures in RCW 74.08A.410. [1997 c 58 § 703.]

Additional notes found at www.leg.wa.gov

74.08A.440 Recipients exempted from active work search—Benefits eligibility. Recipients exempted from active work search activities due to incapacity or a disability shall receive services for which they are eligible, including aged, blind, or disabled assistance benefits as they relate to the facilitation of enrollment in the federal supplemental security income program, referrals to essential needs and housing support benefits, access to chemical dependency treatment, referrals to vocational rehabilitation, and other services needed to assist the recipient in becoming employable. Aged, blind, or disabled assistance and essential needs and housing support benefits shall not supplant cash assistance and other services provided through the temporary assistance for needy families program. To the greatest extent possible, services shall be funded through the temporary assistance for needy families appropriations. [2011 1st sp.s. c 36 § 31; 2010 1st sp.s. c 8 § 32.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.08A.500 Legislative-executive WorkFirst poverty reduction oversight task force—Definitions. The definitions in this section apply throughout chapter 126, Laws of 2018 unless the context clearly requires otherwise.

(1) "Advisory committee" means the intergenerational poverty advisory committee.

(2) "Cycle of poverty" or "poverty cycle" means the set of factors or events by which the long-term poverty of a person is likely to continue and be experienced by each child of the person when the child becomes an adult unless there is outside intervention.

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

(4) "Intergenerational poverty" means poverty in which two or more successive generations of a family continue in the cycle of poverty and governmental dependence, and is not situational poverty.

(5) "Partner agency" means an executive branch agency represented by a voting or nonvoting member of the task force.

(6) "Secretary" means the secretary of the department of social and health services.

(7) "Task force" means the legislative-executive WorkFirst poverty reduction oversight task force. [2018 c 126 § 2.]

Findings—Intent—2018 c 126: See note following RCW 74.08A.505.

74.08A.505 Legislative-executive WorkFirst poverty reduction oversight task force—Membership—Duties—Five-year plan. (1)(a) A legislative-executive WorkFirst poverty reduction oversight task force is established, with voting members as provided in this subsection. Task force membership shall include diverse, statewide representation and its membership shall reflect regional, racial, and cultural diversity to adequately represent the needs of all children and families in the state.

(i) The president of the senate shall appoint two members from each of the two largest caucuses of the senate.

(ii) The speaker of the house of representatives shall appoint two members from each of the two largest caucuses of the house of representatives.

(iii) The governor shall appoint eight members representing the following agencies: The department of social and health services; the department of children, youth, and fami-

lies; the department of commerce; the employment security department; the office of the superintendent of public instruction; the department of health; the department of corrections; and the state board for community and technical colleges.

(b) The task force shall choose its cochairs, one from among the legislative members and one from among the executive branch members. The secretary of the department of social and health services shall convene the initial meeting of the task force.

(2) The governor shall appoint five nonvoting members to the task force representing the:

(a) Commission on African American affairs;

(b) State commission on Hispanic affairs;

(c) State commission on Asian Pacific American affairs;

(d) Governor's office of Indian affairs; and

(e) Office of financial management.

(3) The cochairs of the intergenerational poverty advisory committee created in RCW 74.08A.510 shall serve as nonvoting members of the task force.

(4) The task force shall:

(a) Oversee the partner agencies' operation of the WorkFirst program and temporary assistance for needy families program to ensure that the programs are achieving desired outcomes for their clients;

(b) Determine evidence-based outcome measures for the WorkFirst program, including measures related to equitably serving the needs of historically underrepresented populations, such as English language learners, immigrants, refugees, and other diverse communities;

(c) Develop accountability measures for WorkFirst recipients and the state agencies responsible for their progress toward self-sufficiency;

(d) Collaborate with the advisory committee created in RCW 74.08A.510 to develop and monitor strategies to prevent and address adverse childhood experiences and reduce intergenerational poverty;

(e) Seek input on best practices for poverty reduction from service providers, community-based organizations, legislators, state agencies, stakeholders, the business community, and subject matter experts;

(f) Collaborate with partner agencies and the advisory committee to analyze available data and information regarding intergenerational poverty in the state, with a primary focus on data and information regarding children who are at risk of continuing the cycle of poverty and welfare dependency unless outside intervention occurs; and

(g) Recommend policy actions to the governor and the legislature to effectively reduce intergenerational poverty and promote and encourage self-sufficiency.

(5)(a) The task force shall direct the department of social and health services to develop a five-year plan to reduce intergenerational poverty and promote self-sufficiency, subject to oversight and approval by the task force. Upon approval by the task force, the department must submit the plan to the governor and the appropriate committees of the legislature by December 1, 2019.

(b) The task force shall review the five-year plan by December 1, 2024, and shall direct the department to update the plan as determined necessary by the task force.

(6) The partner agencies must provide the task force with regular reports on:

(a) The partner agencies' progress toward meeting the outcome and performance measures established under this section;

(b) Caseload trends and program expenditures, and the impact of those trends and expenditures on client services, including services to historically underrepresented populations; and

(c) The characteristics of families who have been unsuccessful on the temporary assistance for needy families program and have lost their benefits either through sanction or the sixty-month time limit.

(7) Staff support for the task force, including administration of task force meetings, must be provided by the state agency members of the task force. Additional staff support for legislative members of the task force must be provided by senate committee services and the house of representatives office of program research.

(8) During its [their] tenure, the state agency members of the task force shall respond in a timely manner to data requests from the cochairs.

(9) Legislative members of the task force are reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW. [2018 c 126 § 3.]

Findings—Intent—2018 c 126: "The legislature finds that intergenerational poverty, which passes from parents to children, should be distinguished from situational poverty, which occurs after an event like losing employment. Intergenerational poverty can affect the lives of many future children and generations without the development of specific strategies to stop this cycle.

The legislature finds that it is necessary to bring together state agencies and other stakeholders for the purposes of policy and program development to address intergenerational poverty and to develop specific strategies to provide families the support they need to overcome a history of poverty.

The legislature finds that the legislative-executive WorkFirst oversight task force has recommended that its scope be modified to include poverty reduction in order to provide a renewed focus on the underlying causes of intergenerational poverty in Washington. Therefore, the legislature intends to create a legislative-executive WorkFirst poverty reduction oversight task force and an intergenerational poverty advisory committee in order to lay the groundwork in Washington for advancing intergenerational prosperity and reducing poverty." [2018 c 126 § 1.]

74.08A.510 Legislative-executive WorkFirst poverty reduction oversight task force—Intergenerational poverty advisory committee—Membership—Duties. (1) To assist the task force established in RCW 74.08A.505, there is created the intergenerational poverty advisory committee.

(2) The advisory committee must include diverse, statewide representation from public, nonprofit, and for-profit entities. The committee membership must reflect regional, racial, and cultural diversity to adequately represent the needs of all children and families in the state.

(3) Members of the advisory committee are appointed by the secretary, with the approval of the task force.

(4) The advisory committee must include representatives from:

(a) Advocacy groups that focus on childhood poverty issues;

(b) Advocacy groups that focus on education and early childhood education issues;

(c) Academic experts in childhood poverty, education, or early childhood education issues;

(d) Faith-based organizations that address childhood poverty, education, or early childhood education issues;

(e) Tribal governments;

(f) Families impacted by poverty;

(g) Local government representatives that address childhood poverty or education issues;

(h) The business community;

(i) A subject matter expert in infant mental health;

(j) The department of children, youth, and families; and

(k) The department.

(5) Each member of the advisory committee is appointed for a four-year term unless a member is appointed to complete an unexpired term. The secretary may adjust the length of term at the time of appointment or reappointment so that approximately one-half of the advisory committee is appointed every two years.

(6) The secretary may remove an advisory committee member:

(a) If the member is unable or unwilling to carry out the member's assigned responsibilities; or

(b) For good cause.

(7) If a vacancy occurs in the advisory committee membership for any reason, a replacement may be appointed for the unexpired term.

(8) The advisory committee shall choose cochairs from among its membership. The secretary shall convene the initial meeting of the advisory committee.

(9) A majority of the advisory committee constitutes a quorum of the advisory committee at any meeting and the action of the majority of members present is the action of the advisory committee.

(10) The advisory committee shall:

(a) Meet quarterly at the request of the task force cochairs or the cochairs of the advisory committee;

(b) Make recommendations to the task force on how the task force and the state can effectively address the needs of children affected by intergenerational poverty and achieve the purposes and duties of the task force as described in RCW 74.08A.505;

(c) Ensure that the advisory committee's recommendations to the task force are supported by verifiable data; and

(d) Gather input from diverse communities about the impact of intergenerational poverty on outcomes such as education, health care, employment, involvement in the child welfare system, and other related areas.

(11) The department shall provide staff support to the advisory committee and shall endeavor to accommodate the participation needs of its members. Accommodations may include considering the location and time of committee meetings, making options available for remote participation by members, and convening meetings of the committee in locations with proximity to available child care whenever feasible.

(12) Members of the advisory committee may receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2018 c 126 § 4.]

Findings—Intent—2018 c 126: See note following RCW 74.08A.505.

74.08A.900 Short title—1997 c 58. This act may be known and cited as the Washington WorkFirst temporary assistance for needy families act. [1997 c 58 § 2.]

74.08A.901 Part headings, captions, table of contents not law—1997 c 58. Part headings, captions, and the table of contents used in this act are not any part of the law. [1997 c 58 § 1008.]

74.08A.902 Exemptions and waivers from federal law—1997 c 58. The governor and the department of social and health services shall seek all necessary exemptions and waivers from and amendments to federal statutes, rules, and regulations and shall report to the appropriate committees in the house of representatives and senate quarterly on the efforts to secure the federal changes to permit full implementation of this act at the earliest possible date. [1997 c 58 § 1009.]

74.08A.903 Conflict with federal requirements—1997 c 58. 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. As used in this section, "allocation of federal funds to the state" means the allocation of federal funds that are appropriated by the legislature to the department of social and health services and on which the department depends for carrying out any provision of the operating budget applicable to it. [1997 c 58 § 1011.]

74.08A.904 Severability—1997 c 58. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 58 § 1012.]

74.08A.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 § 174.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 74.09 RCW
MEDICAL CARE

Sections

74.09.010 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) "Bidirectional integration" means integrating behavioral health services into primary care settings and integrating primary care services into behavioral health settings.

(3) "Children's health program" means the health care services program provided to children under eighteen years of age and in households with incomes at or below the federal poverty level as annually defined by the federal department of health and human services as adjusted for family size, and who are not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

(4) "Chronic care management" means the health care management within a health home of persons identified with, or at high risk for, one or more chronic conditions. Effective chronic care management:

(a) Actively assists patients to acquire self-care skills to improve functioning and health outcomes, and slow the progression of disease or disability;

(b) Employs evidence-based clinical practices;

(c) Coordinates care across health care settings and providers, including tracking referrals;

(d) Provides ready access to behavioral health services that are, to the extent possible, integrated with primary care; and

(e) Uses appropriate community resources to support individual patients and families in managing chronic conditions.

(5) "Chronic condition" means a prolonged condition and includes, but is not limited to:

(a) A mental health condition;

(b) A substance use disorder;

(c) Asthma;

(d) Diabetes;

(e) Heart disease; and

(f) Being overweight, as evidenced by a body mass index over twenty-five.

(6) "County" means the board of county commissioners, county council, county executive, or tribal jurisdiction, or its designee.

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

(8) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

(9) "Director" means the director of the Washington state health care authority.

(10) "Full benefit dual eligible beneficiary" means an individual who, for any month: Has coverage for the month under a medicare prescription drug plan or medicare advantage plan with part D coverage; and is determined eligible by the state for full medicaid benefits for the month under any eligibility category in the state's medicaid plan or a section 1115 demonstration waiver that provides pharmacy benefits.

(11) "Health home" or "primary care health home" means coordinated health care provided by a licensed primary care provider coordinating all medical care services, and a multidisciplinary health care team comprised of clinical and nonclinical staff. The term "coordinating all medical care services" shall not be construed to require prior authorization by a primary care provider in order for a patient to receive treatment for covered services by an optometrist licensed under chapter 18.53 RCW. Primary care health home services shall include those services defined as health home services in 42 U.S.C. Sec. 1396w-4 and, in addition, may include, but are not limited to:

(a) Comprehensive care management including, but not limited to, chronic care treatment and management;

(b) Extended hours of service;

(c) Multiple ways for patients to communicate with the team, including electronically and by phone;

(d) Education of patients on self-care, prevention, and health promotion, including the use of patient decision aids;

(e) Coordinating and assuring smooth transitions and follow-up from inpatient to other settings;

(f) Individual and family support including authorized representatives;

(g) The use of information technology to link services, track tests, generate patient registries, and provide clinical data; and

(h) Ongoing performance reporting and quality improvement.

(12) "Internal management" means the administration of medical assistance, medical care services, the children's health program, and the limited casualty program.

(13) "Limited casualty program" means the medical care program provided to medically needy persons as defined under Title XIX of the federal social security act, and to medically indigent persons who are without income or resources sufficient to secure necessary medical services.

(14) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.

(15) "Medical care services" means the limited scope of care financed by state funds and provided to persons who are not eligible for medicaid under RCW 74.09.510 and who are eligible for the aged, blind, or disabled assistance program authorized in RCW 74.62.030 or the essential needs and housing support program pursuant to RCW 74.04.805.

(16) "Multidisciplinary health care team" means an interdisciplinary team of health professionals which may include, but is not limited to, medical specialists, nurses, pharmacists, nutritionists, dieticians, social workers, behavioral and mental health providers including substance use disorder preven-

tion and treatment providers, doctors of chiropractic, physical therapists, licensed complementary and alternative medicine practitioners, home care and other long-term care providers, and physicians' assistants.

(17) "Nursing home" means nursing home as defined in RCW 18.51.010.

(18) "Poverty" means the federal poverty level determined annually by the United States department of health and human services, or successor agency.

(19) "Primary care behavioral health" means a health care integration model in which behavioral health care is colocated, collaborative, and integrated within a primary care setting.

(20) "Primary care provider" means a general practice physician, family practitioner, internist, pediatrician, osteopathic physician, naturopath, physician assistant, osteopathic physician assistant, and advanced registered nurse practitioner licensed under Title 18 RCW.

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

(22) "Whole-person care in behavioral health" means a health care integration model in which primary care services are integrated into a behavioral health setting either through colocation or community-based care management. [2017 c 226 § 5; 2013 2nd sp.s. c 10 § 8. Prior: 2011 1st sp.s. c 15 § 2; 2011 c 316 § 2; prior: 2010 1st sp.s. c 8 § 28; 2007 c 3 § 2; 1990 c 296 § 6; 1987 c 406 § 11; 1981 1st ex.s. c 6 § 18; 1981 c 8 § 17; 1979 c 141 § 333; 1959 c 26 § 74.09.010; prior: 1955 c 273 § 2.]

Sustainable solutions for the integration of behavioral and physical health—2017 c 226: See note following RCW 74.09.497.

Effective date—2013 2nd sp.s. c 10: See note following RCW 74.62.030.

Effective date—2011 1st sp.s. c 15: "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, 2011." [2011 1st sp.s. c 15 § 130.]

Findings—Intent—2011 1st sp.s. c 15: "The legislature finds that:

(1) Washington state government must be organized to be efficient, cost-effective, and responsive to its residents;

(2) The cost of state purchased health care continues to grow at an unsustainable rate, now representing nearly one-third of the state's budget and hindering our ability to invest in other essential services such as education and public safety;

(3) Responsibility for state health care purchasing is currently spread over multiple agencies, but successful interagency collaboration on quality and cost initiatives has helped demonstrate the benefits to the state of centralized health care purchasing;

(4) Consolidating the majority of state health care purchasing into a single state agency will best position the state to work with others, including private sector purchasers, health insurance carriers, health care providers, and consumers to increase the quality and affordability of health care for all state residents;

(5) The development and implementation of uniform state policies for all state purchased health care is among the purposes for which the health care authority was originally created; and

(6) The state will be best able to take advantage of the opportunities and meet its obligations under the federal affordable care act, including establishment of a health benefit exchange and medicaid expansion, if primary responsibility for doing so rests with a single state agency.

The legislature therefore intends, where appropriate, to consolidate state health care purchasing within the health care authority, positioning the state to use its full purchasing power to get the greatest value for its money, and allowing other agencies to focus even more intently on their core missions." [2011 1st sp.s. c 15 § 1.]

Report—2011 1st sp.s. c 15: "(1) By December 10, 2011, the department of social and health services and the health care authority shall provide a preliminary report, and by December 1, 2012, provide a final implementation plan, to the governor and the legislature with recommendations regarding the role of the health care authority in the state's purchasing of mental health treatment, substance abuse treatment, and long-term care services, including services for those with developmental disabilities.

(2) The reports shall:

(a) Consider options for effectively coordinating the purchase and delivery of care for people who need long-term care, developmental disabilities, mental health, or chemical dependency services. Options considered may include, but are not limited to, transitioning purchase of these services from the department of social and health services to the health care authority, and strategies for the agencies to collaborate seamlessly while purchasing services separately; and

(b) Address the following components:

(i) Incentives to improve prevention efforts;

(ii) Service delivery approaches, including models for care management and care coordination and benefit design;

(iii) Rules to assure that those requiring long-term care services and supports receive that care in the least restrictive setting appropriate to their needs;

(iv) Systems to measure cost savings;

(v) Mechanisms to measure health outcomes and consumer satisfaction;

(vi) The designation of a single point of entry for financial and functional eligibility determinations for long-term care services; and

(vii) Process for collaboration with local governments.

(3) In developing these recommendations, the agencies shall:

(a) Consult with tribal governments and with interested stakeholders, including consumers, health care and other service providers, health insurance carriers, and local governments; and

(b) Cooperate with the joint select committee on health reform implementation established in House Concurrent Resolution No. 4404 and any of its advisory committees. The agencies shall strongly consider the guidance and input received from these forums in the development of its recommendations.

(4) The agencies shall submit a progress report to the governor and the legislature by November 15, 2013, that provides details on the agencies' progress on purchasing coordination to date." [2011 1st sp.s. c 15 § 116.]

Agency transfer—2011 1st sp.s. c 15: "(1) All powers, duties, and functions of the department of social and health services pertaining to the medical assistance program and the medicaid purchasing administration are transferred to the health care authority to the extent necessary to carry out the purposes of this act. All references to the secretary or the department of social and health services in the Revised Code of Washington shall be construed to mean the director or the health care authority when referring to the functions transferred in this section.

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

(b) Any appropriations made to the department of social and health services for carrying out the powers, functions, and duties transferred shall, on July 1, 2011, be transferred and credited to the health care authority.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the medicaid purchasing administration at the department of social and health services are transferred to the jurisdiction of the health care authority. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the health care authority 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 state civil service.

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

(5) The transfer of the powers, duties, functions, and personnel of the department of social and health services shall not affect the validity of any act performed before July 1, 2011.

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

(7) A nonsupervisory medicaid purchasing unit bargaining unit is created at the health care authority. All nonsupervisory civil service employees of the medicaid purchasing administration at the department of social and health services assigned to the health care authority under this section whose positions are within the existing bargaining unit description at the department of social and health services shall become a part of the nonsupervisory medicaid purchasing unit bargaining unit at the health care authority under the provisions of chapter 41.80 RCW. The exclusive bargaining representative of the existing bargaining unit at the department of social and health services is certified as the exclusive bargaining representative of the nonsupervisory medicaid purchasing unit bargaining unit at the health care authority without the necessity of an election.

(8) A supervisory medicaid purchasing unit bargaining unit is created at the health care authority. All supervisory civil service employees of the medicaid purchasing administration at the department of social and health services assigned to the health care authority under this section whose positions are within the existing bargaining unit description at the department of social and health services shall become a part of the supervisory medicaid purchasing unit bargaining unit at the health care authority under the provisions of chapter 41.80 RCW. The exclusive bargaining representative of the existing bargaining unit at the department of social and health services is certified as the exclusive bargaining representative of the supervisory medicaid purchasing unit bargaining unit at the health care authority without the necessity of an election.

(9) The bargaining units of employees created under this section are appropriate units under the provisions of chapter 41.80 RCW. However, nothing contained in this section shall be construed to alter the authority of the public employment relations commission under the provisions of chapter 41.80 RCW to amend or modify the bargaining units.

(10) Positions from the department of social and health services central administration are transferred to the jurisdiction of the health care authority. Employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the health care authority 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 state civil service.

(11) All classified employees of the department of social and health services central administration assigned to the health care authority under subsection (10) of this section whose positions are within an existing bargaining unit description at the health care authority shall become a part of the existing bargaining unit at the health care authority and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW." [2011 1st sp.s. c 15 § 124.]

References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: "The code reviser shall note wherever "administrator" is used or referred to in the Revised Code of Washington as the head of the health care authority that the title of the agency head has been changed to "director." The code reviser shall prepare legislation for the 2012 regular session that changes all statutory references to "administrator" of the health care authority to "director" of the health care authority." [2011 1st sp.s. c 15 § 125.]

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

74.09.015 Nurse hotline, when funded. To the extent that sufficient funding is provided specifically for this purpose, the authority shall provide all persons receiving services under this chapter with access to a twenty-four hour, seven day a week nurse hotline. The authority shall determine the most appropriate way to provide the nurse hotline under RCW 41.05.037 and this section, which may include use of the 211 system established in chapter 43.211 RCW. [2011 1st sp.s. c 15 § 122; 2007 c 259 § 16.]

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

74.09.035 Medical care services—Eligibility, standards—Limits. (1) To the extent of available funds, medical care services may be provided to:

(a) Persons eligible for the aged, blind, or disabled assistance program authorized in RCW 74.62.030 and who are not eligible for medicaid under RCW 74.09.510; and

(b) Persons eligible for essential needs and housing support under RCW 74.04.805 and who are not eligible for medicaid under RCW 74.09.510.

(2) Enrollment in medical care services may not result in expenditures that exceed the amount that has been appropriated in the operating budget. If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a particular fiscal year, the department may freeze new enrollment and establish a waiting list of persons who may receive benefits only when sufficient funds are available.

(3) Determination of the amount, scope, and duration of medical care services shall be limited to coverage as defined by the authority, except that adult dental, and routine foot care shall not be included unless there is a specific appropriation for these services.

(4) The authority shall enter into performance-based contracts with one or more managed health care systems for the provision of medical care services under this section. The contract must provide for integrated delivery of medical and mental health services.

(5) The authority shall establish standards of assistance and resource and income exemptions, which may include deductibles and coinsurance provisions. In addition, the authority may include a prohibition against the voluntary assignment of property or cash for the purpose of qualifying for assistance.

(6) Eligibility for medical care services shall commence with the date of eligibility for the aged, blind, or disabled assistance program provided under RCW 74.62.030 or the date of eligibility for the essential needs and housing support program under RCW 74.04.805. [2013 2nd sp.s. c 10 § 7. Prior: 2011 1st sp.s. c 36 § 6; 2011 1st sp.s. c 15 § 3; 2011 c 284 § 3; prior: 2010 1st sp.s. c 8 § 29; 2010 c 94 § 22; 1987 c 406 § 12; 1985 c 5 § 1; 1983 1st ex.s. c 43 § 2; 1982 1st ex.s. c 19 § 3; 1981 1st ex.s. c 6 § 19.]

Effective date—2013 2nd sp.s. c 10: See note following RCW 74.62.030.

Effective date—2011 1st sp.s. c 36 § 6: "Section 6 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 July 22, 2011." [2011 1st sp.s. c 36 § 39.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

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.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

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

Additional notes found at www.leg.wa.gov

74.09.037 Identification card—Social security number restriction. Any card issued by the authority or a managed health care system to a person receiving services under this chapter, that must be presented to providers for purposes of claims processing, may not display an identification number that includes more than a four-digit portion of the person's complete social security number. [2011 1st sp.s. c 15 § 4; 2004 c 115 § 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.

74.09.050 Director's powers and duties—Personnel—Medical screeners—Medical director. (1) The director shall appoint such professional personnel and other assistants and employees, including professional medical screeners, as may be reasonably necessary to carry out the provisions of this chapter or other applicable law. The medical screeners shall be supervised by one or more physicians who shall be appointed by the director or his or her designee. The director shall appoint a medical director who is licensed under chapter 18.57 or 18.71 RCW.

(2) Whenever the director's authority is not specifically limited by law, he or she has complete charge and supervisory powers over the authority. The director is authorized to create such administrative structures as deemed appropriate, except as otherwise specified by law. The director has the power to employ such assistants and personnel as may be necessary for the general administration of the authority. Except as elsewhere specified, such employment must be in accordance with the rules of the state civil service law, chapter 41.06 RCW. [2018 c 201 § 7004; 2011 1st sp.s. c 15 § 5; 2000 c 5 § 15; 1979 c 141 § 335; 1959 c 26 § 74.09.050. Prior: 1955 c 273 § 6.]

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

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—Purpose—2000 c 5: See RCW 48.43.500.

Additional notes found at www.leg.wa.gov

74.09.053 Annual reporting requirement *(as amended by 2009 c 479).* (1) The department of social and health services, in coordination with the health care authority, shall by November 15th of each year report to the legislature:

(a) The number of medical assistance recipients 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. For recipients identified under (a)(i) and (ii) of this subsection, the department shall report the basis for their medical assistance eligibility, including but not limited to family medical coverage, transitional medical assistance, children's medical ((~~or aged or disabled~~)) coverage, aged coverage, or coverage for persons with disabilities; member months; and the total cost to the state for these recipients, expressed as general fund-state((~~, health services account~~)) and general fund-federal dollars. The information shall be reported by employer ((~~[size]~~)) size for employers having more than fifty employees as recipients or with dependents as recipients. 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 recipients or with dependents as recipients by private and governmental employers; (ii) the number of employees who are recipients or with dependents as recipients 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 recipients or with dependents as recipients by industry type.

((~~[(2)]~~)) (2) For each aggregated classification, the report will include the number of hours worked, the number of department of social and health services covered lives, and the total cost to the state for these recipients. This information shall be for each quarter of the preceding year. [2009 c 479 § 62; 2006 c 264 § 2.]

Effective date—2009 c 479: See note following RCW 2.56.030.

74.09.053 Annual reporting requirement *(as amended by 2009 c 568).* (1) Beginning in November 2012, the department of social and health services, in coordination with the health care authority, shall by November 15th of each year report to the legislature:

(a) The number of medical assistance recipients 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. For recipients identified under (a)(i) and (ii) of this subsection, the department shall report the basis for their medical assistance eligibility, including but not limited to family medical coverage, transitional medical assistance, children's medical or aged or ((~~disabled~~)) individuals with disabilities coverage; member months; and the total cost to the state for these recipients, expressed as general fund-state, health services account and general fund-federal dollars. The information shall be reported by employer ((~~[size]~~)) size for employers having more than fifty employees as recipients or with dependents as recipients. 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 recipients or with dependents as recipients by private and governmental employers; (ii) the number of employees who are recipients or with dependents as recipients 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 recipients or with dependents as recipients by industry type.

((~~[(2)]~~)) (2) For each aggregated classification, the report will include the number of hours worked, the number of department of social and health services covered lives, and the total cost to the state for these recipients. This information shall be for each quarter of the preceding year. [2009 c 568 § 6; 2006 c 264 § 2.]

Reviser's note: RCW 74.09.053 was amended twice during the 2009 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.

74.09.055 Copayment, deductible, coinsurance, other cost-sharing requirements authorized. The authority is authorized to establish copayment, deductible, or coinsurance, or other cost-sharing requirements for recipients of any medical programs defined in RCW 74.09.010 or other applicable law, except that premiums shall not be imposed on children in households at or below two hundred percent of the federal poverty level. [2018 c 201 § 7005; 2011 1st sp.s. c 15 § 6; 2006 c 24 § 1; 2003 1st sp.s. c 14 § 1; 1993 c 492 § 231; 1982 c 201 § 19.]

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

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

74.09.075 Employability and disability evaluation—Medical condition—Medical reports—Medical consultations and assistance. The department or authority, as appropriate, shall provide (1) for evaluation of employability when a person is applying for public assistance representing a medical condition as a basis for need, and (2) for medical reports to be used in the evaluation of total and permanent disability. It shall further provide for medical consultation and assistance in determining the need for special diets, housekeeper and attendant services, and other requirements as found necessary because of the medical condition under the rules promulgated by the secretary or director. [2011 1st sp.s. c 15 § 7; 1979 c 141 § 337; 1967 ex.s. c 30 § 2.]

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.

74.09.080 Methods of performing administrative responsibilities. In carrying out the administrative responsibility of this chapter or other applicable law, the department or authority, as appropriate:

(1) May contract with an individual or a group, may utilize existing local state public assistance offices, or establish separate welfare medical care offices on a county or multicounty unit basis as found necessary; and

(2) Shall determine both financial and functional eligibility for persons applying for long-term care services under chapter 74.39 or 74.39A RCW as a unified process in a single long-term care organizational unit. [2018 c 201 § 7006; 2011 1st sp.s. c 15 § 8; 1979 c 141 § 338; 1959 c 26 § 74.09.080. Prior: 1955 c 273 § 9.]

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

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.

74.09.120 Purchases of services, care, supplies—Nursing homes—Veterans' homes—Institutions for persons with intellectual disabilities—Institutions for mental diseases. (1) The department shall purchase nursing home care by contract and payment for the care shall be in accordance with the provisions of chapter 74.46 RCW and rules adopted by the department. No payment shall be made to a nursing home which does not permit inspection by the authority and the department of every part of its premises and an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the authority or the department deems relevant to the regulation of nursing home operations, enforcement of standards for resident care, and payment for nursing home services.

(2) The department may purchase nursing home care by contract in veterans' homes operated by the state department of veterans affairs and payment for the care shall be in accordance with the provisions of chapter 74.46 RCW and rules adopted by the department under the authority of RCW 74.46.800.

(3) The department may purchase care in institutions for persons with intellectual disabilities, also known as intermediate care facilities for persons with intellectual disabilities. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for persons with intellectual disabilities include licensed nursing homes, public institutions, licensed assisted living facilities with fifteen beds or less, and hospital facilities certified as intermediate care facilities for persons with intellectual disabilities under the federal medicaid program to provide health, habilitative, or rehabilitative services and twenty-four hour supervision for persons with intellectual disabilities or related conditions and includes in the program "active treatment" as federally defined.

(4) The department may purchase care in institutions for mental diseases by contract. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for mental diseases are certified under the federal medicaid program and primarily engaged in providing diagnosis, treatment, or care to persons with mental diseases, including medical attention, nursing care, and related services.

(5) Both the department and the authority may each purchase all other services provided under this chapter or other applicable law by contract or at rates established by the department or the authority respectively. [2018 c 201 § 7007; 2012 c 10 § 60; 2011 1st sp.s. c 15 § 9; 2010 c 94 § 23; 1998 c 322 § 45; 1993 sp.s. c 3 § 8; 1992 c 8 § 1; 1989 c 372 § 15; 1983 1st ex.s. c 67 § 44; 1981 2nd ex.s. c 11 § 6; 1981 1st ex.s. c 2 § 11; (1980 c 177 § 84 repealed by 1983 1st ex.s. c 67 § 48); 1975 1st ex.s. c 213 § 1; 1967 ex.s. c 30 § 1; 1959 c 26 § 74.09.120. Prior: 1955 c 273 § 13.]

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

Application—2012 c 10: See note following RCW 18.20.010.

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.

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

Findings—1993 sp.s. c 3: See RCW 72.36.1601.

Conflict with federal requirements and this section: RCW 74.46.840.

Additional notes found at www.leg.wa.gov

74.09.150 Personnel to be under existing merit system. All personnel employed in the administration of the medical care program shall be covered by the existing merit system under the Washington personnel resources board. [1993 c 281 § 66; 1959 c 26 § 74.09.150. Prior: 1955 c 273 § 16.]

Additional notes found at www.leg.wa.gov

74.09.160 Presentment of charges by contractors. Each vendor or group who has a contract and is rendering service to eligible persons as defined in this chapter or other applicable law shall submit such charges as agreed upon between the department or authority, as appropriate, and the individual or group no later than twelve months from the date of service. If the final charges are not presented within the twelve-month period, they shall not be a charge against the state. Said twelve-month period may also be extended by regulation, but only if required by applicable federal law or regulation, and to no more than the extension of time so required. [2018 c 201 § 7008; 2011 1st sp.s. c 15 § 10; 1991

c 103 § 1; 1980 c 32 § 11; 1979 ex.s. c 81 § 1; 1973 1st ex.s. c 48 § 1; 1959 c 26 § 74.09.160. Prior: 1955 c 273 § 17.]

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

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.

74.09.171 Contracts for medicaid services—Border communities. (1) The legislature finds that the authority and the department purchase or contract for the delivery of medicaid programs, including medical services with the managed care plans under this chapter, mental health services with regional support networks or other contractors under chapter 71.24 RCW, chemical dependency services under chapters 74.50 and *70.96A RCW, and long-term care services under chapter 74.39A RCW.

(2) The authority and department must collaborate and seek opportunities to expand access to care for enrollees in the medicaid programs identified in subsection (1) of this section living in border communities that may require contractual agreements with providers across the state border when care is appropriate, available, and cost-effective.

(3) All authority and department contracts for medicaid services issued or renewed after July 1, 2014, must include provisions that allow for care to be accessed cross-border ensuring timely access to necessary care, including inpatient and outpatient services. The contracts must include reciprocal arrangements that allow Washington, Oregon, and Idaho border residents to access care when care is appropriate, available, and cost-effective.

(4) The agencies must jointly report to the health care committees and fiscal committees of the legislature by November 1, 2014, with an update on the contractual opportunities and the anticipated impacts on patient access to timely care, the impact on the availability of inpatient and outpatient services, and the fiscal implications for the medicaid programs. [2014 c 39 § 1.]

***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.

74.09.180 Chapter does not apply if another party is liable—Exception—Subrogation—Lien—Reimbursement—Delegation of lien and subrogation rights. (1) The provisions of this chapter shall not apply to recipients whose personal injuries are occasioned by negligence or wrong of another: PROVIDED, HOWEVER, That the director may furnish assistance, under the provisions of this chapter, for the results of injuries to or illness of a recipient, and the authority shall thereby be subrogated to the recipient's rights against the recovery had from any tort feasor or the tort feasor's insurer, or both, and shall have a lien thereupon to the extent of the value of the assistance furnished by the authority. To secure reimbursement for assistance provided under this section, the authority may pursue its remedies under RCW 41.05A.070.

(2) The rights and remedies provided to the authority in this section to secure reimbursement for assistance, including the authority's lien and subrogation rights, may be delegated to a managed health care system by contract entered into pursuant to RCW 74.09.522. A managed health care system may enforce all rights and remedies delegated to it by the authority to secure and recover assistance provided under a managed health care system consistent with its agreement with the authority. [2011 1st sp.s. c 15 § 11; 1997 c 236 § 1; 1990 c 100 § 2; 1987 c 283 § 14; 1979 ex.s. c 171 § 14; 1971 ex.s. c 306 § 1; 1969 ex.s. c 173 § 8; 1959 c 26 § 74.09.180. Prior: 1955 c 273 § 19.]

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

74.09.185 Third party has legal liability to make payments—State acquires rights—Lien—Equitable subrogation does not apply. To the extent that payment for covered expenses has been made under medical assistance for health care items or services furnished to an individual, in any case where a third party has a legal liability to make payments, the state is considered to have acquired the rights of the individual to payment by any other party for those health care items or services. Recovery pursuant to the subrogation rights, assignment, or enforcement of the lien granted to the authority by this section shall not be reduced, prorated, or applied to only a portion of a judgment, award, or settlement, except as provided in RCW 41.05A.060 and 41.05A.070. The doctrine of equitable subrogation shall not apply to defeat, reduce, or prorate recovery by the authority as to its assignment, lien, or subrogation rights. [2011 1st sp.s. c 15 § 12; 1995 c 34 § 6.]

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.

74.09.190 Religious beliefs—Construction of chapter. Nothing in this chapter shall be construed as empowering the secretary or director to compel any recipient of public assistance and a medical indigent person to undergo any physical examination, surgical operation, or accept any form of medical treatment contrary to the wishes of said person who relies on or is treated by prayer or spiritual means in accordance with the creed and tenets of any well recognized church or religious denomination. [2011 1st sp.s. c 15 § 13; 1979 c 141 § 342; 1959 c 26 § 74.09.190. Prior: 1955 c 273 § 23.]

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.

74.09.195 Audits of health care providers by the authority—Requirements—Procedure. (1) Audits of the records of health care providers performed under this chapter are subject to the following:

(a) The authority must provide at least thirty calendar days' notice before scheduling any on-site audit, unless there is evidence of danger to public health and safety or fraudulent activities;

(b) The authority must make a good faith effort to establish a mutually agreed upon time and date for the on-site audit;

(c) The authority must allow providers, at their request, to submit records requested as a result of an audit in electronic format, including compact disc, digital versatile disc,

or other electronic formats deemed appropriate by the authority, or by facsimile transmission;

(d) The authority shall make reasonable efforts to avoid reviewing claims that are currently being audited by the authority, that have already been audited by the authority, or that are currently being audited by another governmental entity;

(e) A finding of overpayment to a provider in a program operated or administered by the authority may not be based on extrapolation unless there is a determination of sustained high level of payment error involving the provider or when documented educational intervention has failed to correct the level of payment error. Any finding that is based upon extrapolation, and the related sampling, must be established to be statistically fair and reasonable in order to be valid. The sampling methodology used must be validated by a statistician or person with equivalent experience as having a confidence level of ninety-five percent or greater;

(f) The authority must provide a detailed explanation in writing to a provider for any adverse determination that would result in partial or full recoupment of a payment to the provider. The written notification shall, at a minimum, include the following: (i) The reason for the adverse determination; (ii) the specific criteria on which the adverse determination was based; (iii) an explanation of the provider's appeal rights; and (iv) if applicable, the appropriate procedure to submit a claims adjustment in accordance with subsection (3) of this section;

(g) The authority may not recoup overpayments until all informal and formal appeals processes have been completed;

(h) The authority must offer a provider with an adverse determination the option of repaying the amount owed according to a negotiated repayment plan of up to twelve months;

(i) The authority must produce a preliminary report or draft audit findings within one hundred twenty days from the receipt of all requested information as identified in writing by the authority; and

(j) In the event that the authority seeks to recoup funds from a provider who is no longer a contractor with the medical assistance program, the authority must provide a description of the claim, including the patient name, date of service, and procedure. A provider is not required to obtain a court order to receive such information.

(2) Any contractor that conducts audits of the medical assistance program on behalf of the authority must comply with the requirements in this subsection and must:

(a) In any appeal by a health care provider, employ or contract with a medical or dental professional who practices within the same specialty, is board certified, and experienced in the treatment, billing, and coding procedures used by the provider being audited to make findings and determinations;

(b) Compile, on an annual basis, metrics specified by the authority. The authority shall publish the metrics on its web site. The metrics must, at a minimum, include:

(i) The number and type of claims reviewed;

(ii) The number of records requested;

(iii) The number of overpayments and underpayments identified by the contractor;

(iv) The aggregate dollar amount associated with identified overpayments and underpayments;

(v) The duration of audits from initiation until time of completion;

(vi) The number of adverse determinations and the overturn rates of those determinations at each stage of the informal and formal appeal process;

(vii) The number of informal and formal appeals filed by providers categorized by disposition status;

(viii) The contractor's compensation structure and dollar amount of compensation; and

(ix) A copy of the authority's contract with the contractor.

(3) The authority shall develop and implement a procedure by which an improper payment identified by an audit may be resubmitted as a claims adjustment.

(4) The authority shall provide educational and training programs annually for providers. The training topics must include a summary of audit results, a description of common issues, problems and mistakes identified through audits and reviews, and opportunities for improvement. [2017 c 242 § 1.]

74.09.200 Audits and investigations—Legislative declaration—State authority. The legislature finds and declares it to be in the public interest and for the protection of the health and welfare of the residents of the state of Washington that a proper regulatory and inspection program be instituted in connection with the providing of medical, dental, and other health services to recipients of public assistance and medically indigent persons. In order to effectively accomplish such purpose and to assure that the recipient of such services receives such services as are paid for by the state of Washington, the acceptance by the recipient of such services, and by practitioners of reimbursement for performing such services, shall authorize the secretary or director, to inspect and audit all records in connection with the providing of such services. [2011 1st sp.s. c 15 § 14; 1979 ex.s. c 152 § 1.]

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.

74.09.210 Fraudulent practices—Penalties. (1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an individual public assistance recipient of health care, shall, on behalf of himself or herself or others, obtain or attempt to obtain benefits or payments under this chapter or other applicable law in a greater amount than that to which entitled by means of:

(a) A willful false statement;

(b) By willful misrepresentation, or by concealment of any material facts; or

(c) By other fraudulent scheme or device, including, but not limited to:

(i) Billing for services, drugs, supplies, or equipment that were unfurnished, of lower quality, or a substitution or misrepresentation of items billed; or

(ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person or entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for

repayment of any excess benefits or payments received, plus interest at the rate and in the manner provided in RCW 43.20B.695. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The director or the attorney general may assess civil penalties in an amount not to exceed three times the amount of such excess benefits or payments: PROVIDED, That these civil penalties shall not apply to any acts or omissions occurring prior to September 1, 1979. RCW 43.20A.215 governs notice of a civil fine assessed by the director and provides the right to an adjudicative proceeding.

(3) A criminal action need not be brought against a person for that person to be civilly liable under this section.

(4) In all administrative proceedings under this section, service, adjudicative proceedings, and judicial review of such determinations shall be in accordance with chapter 34.05 RCW, the administrative procedure act.

(5) Civil penalties shall be deposited upon their receipt into the medicaid fraud penalty account established in RCW 74.09.215.

(6) The attorney general may contract with private attorneys and local governments in bringing actions under this section as necessary. [2018 c 201 § 7009; 2013 c 23 § 202; 2012 c 241 § 102; 2011 1st sp.s. c 15 § 15; 1989 c 175 § 146; 1987 c 283 § 7; 1979 ex.s. c 152 § 2.]

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

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

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

74.09.215 Medicaid fraud penalty account. The medicaid fraud penalty account is created in the state treasury. All receipts from civil penalties collected under RCW 74.09.210, all receipts received under judgments or settlements that originated under a filing under the federal false claims act, all receipts from fines received pursuant to RCW 43.71C.090, and all receipts received under judgments or settlements that originated under the state medicaid fraud false claims act, chapter 74.66 RCW, must be deposited into the account. Moneys in the account may be spent only after appropriation and must be used only for medicaid services, fraud detection and prevention activities, recovery of improper payments, for other medicaid fraud enforcement activities, and the prescription monitoring program established in chapter 70.225 RCW. For the 2013-2015 fiscal biennium, moneys in the account may be spent on inpatient and outpatient rebasing and conversion to the tenth version of the international classification of diseases. For the 2011-2013 fiscal biennium, moneys in the account may be spent on inpatient and outpatient rebasing. [2019 c 334 § 14. Prior: 2013 2nd sp.s. c 4 § 1902; 2013 2nd sp.s. c 4 § 997; 2013 2nd sp.s. c 4 § 995; 2013 c 36 § 3; 2012 c 241 § 103.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Findings—2013 c 36: See note following RCW 70.225.020.

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.09.220 Liability for receipt of excess payments. Any person, firm, corporation, partnership, association, agency, institution or other legal entity, but not including an individual public assistance recipient of health care, that, without intent to violate this chapter or other applicable law, obtains benefits or payments under this code to which such person or entity is not entitled, or in a greater amount than that to which entitled, shall be liable for (1) any excess benefits or payments received, and (2) interest calculated at the rate and in the manner provided in RCW 43.20B.695. Whenever a penalty is due under RCW 74.09.210 or interest is due under RCW 43.20B.695, such penalty or interest shall not be reimbursable by the state as an allowable cost under any of the provisions of this chapter or other applicable law. [2018 c 201 § 7010; 1987 c 283 § 8; 1979 ex.s. c 152 § 3.]

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

Additional notes found at www.leg.wa.gov

74.09.230 False statements, fraud—Penalties. Any person, including any corporation, that

(1) knowingly makes or causes to be made any false statement or representation of a material fact in any application for any payment under any medical care program authorized under this chapter or other applicable law, or

(2) at any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to such payment, or knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact in connection with such application or payment, or

(3) having knowledge of the occurrence of any event affecting (a) the initial or continued right to any payment, or (b) the initial or continued right to any such payment of any other individual in whose behalf he or she has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount or quantity than is due or when no such payment is authorized,

shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [2018 c 201 § 7011; 2013 c 23 § 203; 1979 ex.s. c 152 § 4.]

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

74.09.240 Bribes, kickbacks, rebates—Self-referrals—Penalties. (1) Any person, including any corporation, that solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind

(a) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter or other applicable law, or

(b) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter or other applicable law,

shall be guilty of a class C felony; however, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(2) Any person, including any corporation, that offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person

(a) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter or other applicable law, or

(b) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter or other applicable law,

shall be guilty of a class C felony; however, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(3)(a) Except as provided in 42 U.S.C. 1395 nn, physicians are prohibited from self-referring any client eligible under this chapter for the following designated health services to a facility in which the physician or an immediate family member has a financial relationship:

(i) Clinical laboratory services;

(ii) Physical therapy services;

(iii) Occupational therapy services;

(iv) Radiology including magnetic resonance imaging, computerized axial tomography, and ultrasound services;

(v) Durable medical equipment and supplies;

(vi) Parenteral and enteral nutrients equipment and supplies;

(vii) Prosthetics, orthotics, and prosthetic devices;

(viii) Home health services;

(ix) Outpatient prescription drugs;

(x) Inpatient and outpatient hospital services;

(xi) Radiation therapy services and supplies.

(b) For purposes of this subsection, "financial relationship" means the relationship between a physician and an entity that includes either:

(i) An ownership or investment interest; or

(ii) A compensation arrangement.

For purposes of this subsection, "compensation arrangement" means an arrangement involving remuneration between a physician, or an immediate family member of a physician, and an entity.

(c) The department or authority, as appropriate, is authorized to adopt by rule amendments to 42 U.S.C. 1395 nn enacted after July 23, 1995.

(d) This section shall not apply in any case covered by a general exception specified in 42 U.S.C. Sec. 1395 nn.

(4) Subsections (1) and (2) of this section shall not apply to:

(a) A discount or other reduction in price obtained by a provider of services or other entity under this chapter or other applicable law if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter or other applicable law; and

(b) Any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(5) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW. [2018 c 201 § 7012; 2011 1st sp.s. c 15 § 16; 1995 c 319 § 1; 1979 ex.s. c 152 § 5.]

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

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.

74.09.250 False statements regarding institutions, facilities—Penalties. Any person, including any corporation, that knowingly makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operations of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, nursing facility, or home health agency, shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than five thousand dollars. [1991 sp.s. c 8 § 6; 1979 ex.s. c 152 § 6.]

Additional notes found at www.leg.wa.gov

74.09.260 Excessive charges, payments—Penalties. Any person, including any corporation, that knowingly:

(1) Charges, for any service provided to a patient under any medical care plan authorized under this chapter or other applicable law, money or other consideration at a rate in excess of the rates established by the department or authority, as appropriate; or

(2) Charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under such plan, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient):

(a) As a precondition of admitting a patient to a hospital or nursing facility; or

(b) As a requirement for the patient's continued stay in such facility,

when the cost of the services provided therein to the patient is paid for, in whole or in part, under such plan, shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [2018 c 201 § 7013; 2011 1st sp.s. c 15 § 17; 1991 sp.s. c 8 § 7; 1979 ex.s. c 152 § 7.]

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

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

74.09.270 Failure to maintain trust funds in separate account—Penalties. (1) Any person having any patient trust funds in his or her possession, custody, or control, who, knowing that he or she is violating any statute, regulation, or

agreement, deliberately fails to deposit, transfer, or maintain said funds in a separate, designated, trust bank account as required by such statute, regulation, or agreement shall be guilty of a gross misdemeanor and shall be punished by imprisonment for up to three hundred sixty-four days in the county jail, or by a fine of not more than ten thousand dollars or as authorized by RCW 9A.20.030, or by both such fine and imprisonment.

(2) "Patient trust funds" are funds received by any health care facility which belong to patients and are required by any state or federal statute, regulation, or by agreement to be kept in a separate trust bank account for the benefit of such patients.

(3) This section shall not be construed to prevent a prosecution for theft. [2011 c 96 § 54; 1979 ex.s. c 152 § 8.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

74.09.280 False verification of written statements—Penalties. The secretary or director may by rule require that any application, statement, or form filled out by suppliers of medical care under this chapter or other applicable law shall contain or be verified by a written statement that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each such paper shall in such event so state. The making or subscribing of any such papers or forms containing any false or misleading information may be prosecuted and punished under chapter 9A.72 RCW. [2018 c 201 § 7014; 2011 1st sp.s. c 15 § 18; 1979 ex.s. c 152 § 9.]

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

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.

74.09.290 Audits and investigations of providers—Patient records—Penalties. The secretary or director shall have the authority to:

(1) Conduct audits and investigations of providers of medical and other services furnished pursuant to this chapter or other applicable law, except that the Washington medical commission shall generally serve in an advisory capacity to the secretary or director in the conduct of audits or investigations of physicians. Any overpayment discovered as a result of an audit of a provider under this authority shall be offset by any underpayments discovered in that same audit sample. In order to determine the provider's actual, usual, customary, or prevailing charges, the secretary or director may examine such random representative records as necessary to show accounts billed and accounts received except that in the conduct of such examinations, patient names, other than public assistance applicants or recipients, shall not be noted, copied, or otherwise made available to the department or authority. In order to verify costs incurred by the department or authority for treatment of public assistance applicants or recipients, the secretary or director may examine patient records or portions thereof in connection with services to such applicants or recipients rendered by a health care provider, notwithstanding the provisions of RCW 5.60.060, 18.53.200, 18.83.110, or any other statute which may make or purport to make such records privileged or confidential: PROVIDED, That no original patient records shall be removed from the premises of the health care provider, and that the disclosure of any records or information by the department or the authority is prohibited and shall be punishable as a class C felony according to chapter 9A.20 RCW, unless such disclosure is directly connected to the official purpose for which the records or information were obtained: PROVIDED FURTHER, That the disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative, or criminal proceeding against the patient unless a waiver of the applicable evidentiary privilege is obtained: PROVIDED FURTHER, That the secretary or director shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation or proceedings;

(2) Approve or deny applications to participate as a provider of services furnished pursuant to this chapter or other applicable law;

(3) Terminate or suspend eligibility to participate as a provider of services furnished pursuant to this chapter or other applicable law; and

(4) Adopt, promulgate, amend, and repeal administrative rules, in accordance with the administrative procedure act, chapter 34.05 RCW, to carry out the policies and purposes of this section and RCW 74.09.200 through 74.09.280. [2019 c 55 § 19; 2018 c 201 § 7015; 2011 1st sp.s. c 15 § 19; 1994 sp.s. c 9 § 749; 1990 c 100 § 5; 1983 1st ex.s. c 41 § 23; 1979 ex.s. c 152 § 10.]

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

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

74.09.295 Disclosure of involuntary commitment information. It is permissible to provide to a correctional institution, as defined in RCW 9.94.049, with the fact, place, and date of an involuntary commitment and the fact and date of discharge or release of a person who has been involuntarily committed under chapter 71.05 or 71.34 RCW, without a person's consent, in the course of the implementation and use of the department's postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555. Disclosure under this section is mandatory for the purposes of the health insurance portability and accountability act. [2011 c 305 § 2.]

Findings—2011 c 305: "The legislature finds that effective collaboration and communication between mental health and chemical dependency treatment providers and service delivery systems and law enforcement and criminal justice agencies is important to both the care of persons with mental disorders and chemical dependency and public safety. The legislature also finds that many state and local efforts in recent years have worked to address improved treatment of persons with mental disorders, chemical dependency disorders, or co-occurring mental and substance abuse disorders who are confined in a correctional institution and to improve communication and collaboration among the agencies, institutions, and professionals who are responsible for the care or custody of those persons. While numerous laws have been enacted to clarify the appropriate sharing of information between

those agencies, institutions, and professionals, the legislature finds further clarification will continue to aide [aid] and improve the care of those persons and augment public safety." [2011 c 305 § 1.]

74.09.300 Department to report penalties to appropriate licensing agency or disciplinary board. Whenever the secretary or director imposes a civil penalty under RCW 74.09.210, or terminates or suspends a provider's eligibility under RCW 74.09.290, he or she shall, if the provider is licensed pursuant to Titles 18, 70, or 71 RCW, give written notice of such imposition, termination, or suspension to the appropriate licensing agency or disciplinary board. [2011 1st sp.s. c 15 § 20; 1979 ex.s. c 152 § 11.]

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.

74.09.315 Whistleblowers—Workplace reprisal or retaliatory action. (1) For the purposes of this section:

(a) "Employer" means any person, firm, corporation, partnership, association, agency, institution, or other legal entity.

(b) "Whistleblower" means an employee of an employer that obtains or attempts to obtain benefits or payments under this chapter or other applicable law in violation of RCW 74.09.210, who in good faith reports a violation of RCW 74.09.210 to the authority.

(c) "Workplace reprisal or retaliatory action" includes, but is not limited to: Denial of adequate staff to fulfill duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct under Title 18 RCW; unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations; demotion; reduction in pay; denial of promotion; suspension; dismissal; denial of employment; a supervisor or superior behaving in or encouraging coworkers to behave in a hostile manner toward the whistleblower; or a change in the physical location of the employee's workplace or a change in the basic nature of the employee's job, if either are in opposition to the employee's expressed wish.

(2) A whistleblower who 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 authority about a suspected violation of RCW 74.09.210 may remain confidential if requested. The identity of the whistleblower must subsequently remain confidential unless the authority determines that the complaint was not made in good faith.

(3) This section does not prohibit an employer 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 do not prevent an employer from: (a) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (b) reducing the hours of employment or terminating employment as a result of the demonstrated inability to meet payroll requirements. The authority shall determine if the employer 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.

(4) The authority shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under this chapter. The authority shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes. [2018 c 201 § 7016; 2012 c 241 § 104.]

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

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.09.325 Reimbursement of a health care service provided through telemedicine or store and forward technology—Report to the legislature. (1) Upon initiation or renewal of a contract with the Washington state health care authority to administer a medicaid managed care plan, a managed health care system shall reimburse a provider for a health care service provided to a covered person through telemedicine or store and forward technology if:

(a) The medicaid managed care plan in which the covered person is enrolled provides coverage of the health care service when provided in person by the provider;

(b) The health care service is medically necessary;

(c) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015; and

(d) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information.

(2)(a) If the service is provided through store and forward technology there must be an associated visit between the covered person and the referring health care provider. Nothing in this section prohibits the use of telemedicine for the associated office visit.

(b) For purposes of this section, reimbursement of store and forward technology is available only for those services specified in the negotiated agreement between the managed health care system and health care provider.

(3) An originating site for a telemedicine health care service subject to subsection (1) of this section includes a:

(a) Hospital;

(b) Rural health clinic;

(c) Federally qualified health center;

(d) Physician's or other health care provider's office;

(e) Community mental health center;

(f) Skilled nursing facility;

(g) Home or any location determined by the individual receiving the service; or

(h) Renal dialysis center, except an independent renal dialysis center.

(4) Except for subsection (3)(g) of this section, any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient.

Reimbursement must be subject to a negotiated agreement between the originating site and the managed health care system. A distant site or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) A managed health care system may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(6) A managed health care system may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan in which the covered person is enrolled including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

(7) This section does not require a managed health care system to reimburse:

(a) An originating site for professional fees;

(b) A provider for a health care service that is not a covered benefit under the plan; or

(c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(8) For purposes of this section:

(a) "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;

(b) "Health care service" has the same meaning as in RCW 48.43.005;

(c) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;

(d) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under this chapter and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e) "Originating site" means the physical location of a patient receiving health care services through telemedicine;

(f) "Provider" has the same meaning as in RCW 48.43.005;

(g) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(h) "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. For purposes of this section only, "telemedicine" does not include the use of audio-only telephone, facsimile, or email.

(9) To measure the impact on access to care for underserved communities and costs to the state and the medicaid managed health care system for reimbursement of telemedicine services, the Washington state health care authority, using existing data and resources, shall provide a report to the appropriate policy and fiscal committees of the legislature no later than December 31, 2018. [2017 c 219 § 3; 2016 c 68 § 5; 2015 c 23 § 4.]

Effective date—2017 c 219: See note following RCW 48.43.735.

Effective date—Intent—2016 c 68: See notes following RCW 48.43.735.

Effective date—Adoption of sections—2015 c 23 §§ 2-4: See notes following RCW 41.05.700.

Intent—2015 c 23: See note following RCW 41.05.700.

74.09.330 Reimbursement methodology for ambulance services—Transport of a medical assistance enrollee to a mental health facility or chemical dependency program. The authority shall develop a reimbursement methodology for ambulance services when transporting a medical assistance enrollee to a mental health facility or chemical dependency program in accordance with the applicable alternative facility procedures adopted under RCW 70.168.100. [2015 c 157 § 6.]

74.09.335 Reimbursement of health care services provided by fire departments—Adoption of standards. The authority shall adopt standards for the reimbursement of health care services provided to eligible clients by fire departments pursuant to a community assistance referral and education services program under RCW 35.21.930. The standards must allow payment for covered health care services provided to individuals whose medical needs do not require ambulance transport to an emergency department. [2017 c 273 § 1.]

74.09.337 Children's mental health—Authority's duties. ***(Effective until January 1, 2020.)*** (1) For children who are eligible for medical assistance and who have been identified as requiring mental health treatment, the authority must oversee the coordination of resources and services through (a) the managed health care system as defined in RCW 74.09.325 and (b) tribal organizations providing health care services. The authority must ensure the child receives treatment and appropriate care based on their assessed needs, regardless of whether the referral occurred through primary care, school-based services, or another practitioner.

(2) The authority must require each managed health care system as defined in RCW 74.09.325 and each behavioral health organization to develop and maintain adequate capacity to facilitate child mental health treatment services in the community or transfers to a behavioral health organization, depending on the level of required care. Managed health care systems and behavioral health organizations must:

(a) Follow up with individuals to ensure an appointment has been secured;

(b) Coordinate with and report back to primary care provider offices on individual treatment plans and medication management, in accordance with patient confidentiality laws;

(c) Provide information to health plan members and primary care providers about the behavioral health resource line available twenty-four hours a day, seven days a week; and

(d) Maintain an accurate list of providers contracted to provide mental health services to children and youth. The list

must contain current information regarding the providers' availability to provide services. The current list must be made available to health plan members and primary care providers.

(3) This section expires June 30, 2020. [2017 c 226 § 4.]

Sustainable solutions for the integration of behavioral and physical health—2017 c 226: See note following RCW 74.09.497.

74.09.337 Children's mental health—Authority's duties—Managed health care system requirements. ***(Effective January 1, 2020, until June 30, 2020.)*** (1) For children who are eligible for medical assistance and who have been identified as requiring mental health treatment, the authority must oversee the coordination of resources and services through (a) the managed health care system as defined in RCW 74.09.325 and (b) tribal organizations providing health care services. The authority must ensure the child receives treatment and appropriate care based on their assessed needs, regardless of whether the referral occurred through primary care, school-based services, or another practitioner.

(2) The authority must require each managed health care system as defined in RCW 74.09.325 to develop and maintain adequate capacity to facilitate child mental health treatment services in the community. Managed health care systems must:

(a) Follow up with individuals to ensure an appointment has been secured;

(b) Coordinate with and report back to primary care provider offices on individual treatment plans and medication management, in accordance with patient confidentiality laws;

(c) Provide information to health plan members and primary care providers about the behavioral health resource line available twenty-four hours a day, seven days a week; and

(d) Maintain an accurate list of providers contracted to provide mental health services to children and youth. The list must contain current information regarding the providers' availability to provide services. The current list must be made available to health plan members and primary care providers.

(3) This section expires June 30, 2020. [2019 c 325 § 4001; 2017 c 226 § 4.]

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

Sustainable solutions for the integration of behavioral and physical health—2017 c 226: See note following RCW 74.09.497.

74.09.340 Personal needs allowance, adjusted. (1) Except as provided in RCW 72.36.160, beginning January 1, 2019, the personal needs allowance for clients being served in medical institutions and in residential settings is seventy dollars.

(2) Beginning January 1, 2020, and each year thereafter, subject to the availability of amounts appropriated for this specific purpose, the personal needs allowance shall be adjusted for economic trends and conditions by increasing the allowance by the percentage cost-of-living adjustment for old-age, survivors, and disability social security benefits as published by the federal social security administration. However, in no case shall the personal needs allowance exceed the maximum personal needs allowance permissible under the federal social security act. [2018 c 137 § 1; 2017 c 270 § 2.]

Findings—Intent—2017 c 270: "(1) The legislature finds that through the medicaid program, state and federal government fund long-term care, mental health, and medical services for many elderly persons and people with disabilities, both in institutions and in community alternatives. The legislature also finds that a significant portion of these individuals' social security benefits is retained by the state to assist with the cost of their care. The legislature intends that these individuals retain for their own use a reasonable and modest personal needs allowance which may be used to purchase clothing, postage, barber services, travel, and other personal items not covered by their care setting, in order to promote their autonomy and personal dignity.

(2) It is the intent of the legislature to adjust the personal needs allowance annually to reflect cost-of-living adjustments to federal social security benefits for medicaid-eligible residents in institutions and community-based residential settings receiving long-term care, developmental disabilities, or mental health services." [2017 c 270 § 1.]

Effective date—2017 c 270: "Section 2 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 July 1, 2017." [2017 c 270 § 3.]

74.09.390 Access to baby and child dentistry program—Coverage for children with disabilities—Authority's duties—Report to legislature. (1) Subject to the availability of amounts appropriated for this specific purpose, the authority shall expand the access to baby and child dentistry program to include children with disabilities as eligible clients.

(2) Once enrolled in the program, eligible children with disabilities must be covered until their thirteenth birthday.

(3) Children with disabilities enrolled in the program shall receive all services and benefits received by program clients.

(4) The authority shall pay enhanced fees for program services provided to children with disabilities enrolled in the program to dentists and dental hygienists certified to provide program services to children with disabilities. To receive certification to provide program services to children with disabilities, a dentist or dental hygienist must:

(a) Be licensed under Title 18 RCW; and

(b) Complete a course on treating children with disabilities as defined by the authority in rule.

(5) On or before December 15, 2018, and on or before December 15, 2019, the authority, in consultation with any organizations administering the program, shall provide a report, in compliance with RCW 43.01.036, to the health care and fiscal committees of the legislature, to include:

(a) The number of dentists and dental hygienists participating in the program; and

(b) The number of children with disabilities who received treatment through the program.

(6) For purposes of this section:

(a) "Children with disabilities" means all individuals under the age of thirteen with a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition closely related to an intellectual disability or that requires treatment similar to that required for persons with intellectual disabilities, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to such individual, who are eligible for one of the following medical assistance programs:

(i) Categorically needy program;

(ii) Limited casualty program-medically needy program;

(iii) Children's health program; or

(iv) State children's health insurance program.

(b) "Program" means the access to baby and child dentistry program as established by WAC 182-535-1245 or successor rule. [2018 c 156 § 1.]

74.09.402 Children's health care—Findings—Intent. (1) The legislature finds that:

(a) Improving the health of children in Washington state is an investment in a productive and successful next generation. The health of children is critical to their success in school and throughout their lives;

(b) Healthy children are ready to learn. In order to provide students with the opportunity to become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives, the state recognizes the importance that access to appropriate health services and improved health brings to the children of Washington state. In addition, fully immunized children are themselves protected, and in turn protect others, from contracting communicable diseases;

(c) Children with health insurance coverage have better health outcomes than those who lack coverage. Children without health insurance coverage are more likely to be in poor health and more likely to delay receiving, or go without, needed health care services;

(d) Health care coverage for children in Washington state is the product of critical efforts in both the private and public sectors to help children succeed. Private health insurance coverage is complemented by public programs that meet needs of low-income children whose parents are not offered health insurance coverage through their employer or who cannot otherwise afford the costs of coverage. In 2006, thirty-five percent of children in Washington state had some form of public health coverage. Washington state is making progress in its efforts to increase the number of children with health care coverage. Yet, even with these efforts of both private and public sectors, many children in Washington state continue to lack health insurance coverage. In 2006, over seventy thousand children were uninsured. Almost two-thirds of these children are in families whose income is under two hundred fifty percent of the federal poverty level; and

(e) Improved health outcomes for the children of Washington state are the expected result of improved access to health care coverage. Linking children with a medical home that provides preventive and well child health services and referral to needed specialty services, linking children with needed behavioral health and dental services, more effectively managing childhood diseases, improving nutrition, and increasing physical activity are key to improving children's health. Care should be provided in appropriate settings by efficient providers, consistent with high quality care and at an appropriate stage, soon enough to avert the need for overly expensive treatment.

(2) It is therefore the intent of the legislature that:

(a) All children in the state of Washington have health care coverage by 2010. This should be accomplished by building upon and strengthening the successes of private health insurance coverage and publicly supported children's health insurance programs in Washington state. Access to coverage should be streamlined and efficient, with reductions in unnecessary administrative costs and mechanisms to expeditiously link children with a medical home;

(b) The state, in collaboration with parents, schools, communities, health plans, and providers, take steps to improve health outcomes for the children of Washington state by linking children with a medical home, identifying health improvement goals for children, and linking innovative purchasing strategies to those goals. [2007 c 5 § 1; 2005 c 279 § 1.]

74.09.460 Children's affordable health coverage—Findings—Intent. (1) The legislature finds that parents have a responsibility to:

(a) Enroll their children in affordable health coverage;

(b) Ensure that their children receive appropriate well-child preventive care;

(c) Link their child with a medical home; and

(d) Understand and act upon the health benefits of good nutrition and physical activity.

(2) The legislature intends that the programs and outreach and education efforts established in RCW 74.09.470 (6), as well as partnerships with the public and private sectors, provide the support and information needed by parents to meet the responsibilities set forth in this section. [2007 c 5 § 3.]

74.09.470 Children's affordable health coverage—Authority duties. (1) Consistent with the goals established in RCW 74.09.402, through the apple health for kids program authorized in this section, the authority shall provide affordable health care coverage to children under the age of nineteen who reside in Washington state and whose family income at the time of enrollment is not greater than two hundred fifty percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services, and effective January 1, 2009, and only to the extent that funds are specifically appropriated therefor, to children whose family income is not greater than three hundred percent of the federal poverty level. In administering the program, the authority shall take such actions as may be necessary to ensure the receipt of federal financial participation under the medical assistance program, as codified at Title XIX of the federal social security act, the state children's health insurance program, as codified at Title XXI of the federal social security act, and any other federal funding sources that are now available or may become available in the future. The authority and the caseload forecast council shall estimate the anticipated caseload and costs of the program established in this section.

(2) The authority shall accept applications for enrollment for children's health care coverage; establish appropriate minimum-enrollment periods, as may be necessary; and determine eligibility based on current family income. The authority shall make eligibility determinations within the time frames for establishing eligibility for children on medical assistance, as defined by RCW 74.09.510. The application and annual renewal processes shall be designed to minimize administrative barriers for applicants and enrolled clients, and to minimize gaps in eligibility for families who are eligible for coverage. If a change in family income results in a change in the source of funding for coverage, the authority shall transfer the family members to the appropriate source of funding and notify the family with respect to any change in

premium obligation, without a break in eligibility. The authority shall use the same eligibility redetermination and appeals procedures as those provided for children on medical assistance programs. The authority shall modify its eligibility renewal procedures to lower the percentage of children failing to annually renew. The authority shall manage its outreach, application, and renewal procedures with the goals of: (a) Achieving year by year improvements in enrollment, enrollment rates, renewals, and renewal rates; (b) maximizing the use of existing program databases to obtain information related to earned and unearned income for purposes of eligibility determination and renewals, including, but not limited to, the basic food program, the child care subsidy program, federal social security administration programs, and the employment security department wage database; (c) streamlining renewal processes to rely primarily upon data matches, online submissions, and telephone interviews; and (d) implementing any other eligibility determination and renewal processes to allow the state to receive an enhanced federal matching rate and additional federal outreach funding available through the federal children's health insurance program reauthorization act of 2009 by January 2010. The department shall advise the governor and the legislature regarding the status of these efforts by September 30, 2009. The information provided should include the status of the department's efforts, the anticipated impact of those efforts on enrollment, and the costs associated with that enrollment.

(3) To ensure continuity of care and ease of understanding for families and health care providers, and to maximize the efficiency of the program, the amount, scope, and duration of health care services provided to children under this section shall be the same as that provided to children under medical assistance, as defined in RCW 74.09.520.

(4) The primary mechanism for purchasing health care coverage under this section shall be through contracts with managed health care systems as defined in RCW 74.09.522, subject to conditions, limitations, and appropriations provided in the biennial appropriations act. However, the authority shall make every effort within available resources to purchase health care coverage for uninsured children whose families have access to dependent coverage through an employer-sponsored health plan or another source when it is cost-effective for the state to do so, and the purchase is consistent with requirements of Title XIX and Title XXI of the federal social security act. To the extent allowable under federal law, the authority shall require families to enroll in available employer-sponsored coverage, as a condition of participating in the program established under this section, when it is cost-effective for the state to do so. Families who enroll in available employer- sponsored coverage under this section shall be accounted for separately in the annual report required by RCW 74.09.053.

(5)(a) To reflect appropriate parental responsibility, the authority shall develop and implement a schedule of premiums for children's health care coverage due to the authority from families with income greater than two hundred percent of the federal poverty level. For families with income greater than two hundred fifty percent of the federal poverty level, the premiums shall be established in consultation with the senate majority and minority leaders and the speaker and minority leader of the house of representatives. For children eligible for coverage under the federally funded children's health insurance program, Title XXI of the federal social security act, premiums shall be set at a reasonable level that does not pose a barrier to enrollment. The amount of the premium shall be based upon family income and shall not exceed the premium limitations in Title XXI of the federal social security act. For children who are not eligible for coverage under the federally funded children's health insurance program, premiums shall be set every two years in an amount no greater than the average state-only share of the per capita cost of coverage in the state-funded children's health program.

(b) Premiums shall not be imposed on children in households at or below two hundred percent of the federal poverty level as articulated in RCW 74.09.055.

(c) Beginning no later than January 1, 2010, the authority shall offer families whose income is greater than three hundred percent of the federal poverty level the opportunity to purchase health care coverage for their children through the programs administered under this section without an explicit premium subsidy from the state. The design of the health benefit package offered to these children should provide a benefit package substantially similar to that offered in the apple health for kids program, and may differ with respect to cost-sharing, and other appropriate elements from that provided to children under subsection (3) of this section including, but not limited to, application of preexisting conditions, waiting periods, and other design changes needed to offer affordable coverage. The amount paid by the family shall be in an amount equal to the rate paid by the state to the managed health care system for coverage of the child, including any associated and administrative costs to the state of providing coverage for the child. Any pooling of the program enrollees that results in state fiscal impact must be identified and brought to the legislature for consideration.

(6) The authority shall undertake and continue a proactive, targeted outreach and education effort with the goal of enrolling children in health coverage and improving the health literacy of youth and parents. The authority shall collaborate with the department of social and health services, department of health, local public health jurisdictions, the office of the superintendent of public instruction, the department of children, youth, and families, health educators, health care providers, health carriers, community-based organizations, and parents in the design and development of this effort. The outreach and education effort shall include the following components:

(a) Broad dissemination of information about the availability of coverage, including media campaigns;

(b) Assistance with completing applications, and community-based outreach efforts to help people apply for coverage. Community-based outreach efforts should be targeted to the populations least likely to be covered;

(c) Use of existing systems, such as enrollment information from the free and reduced-price lunch program, the department of children, youth, and families child care subsidy program, the department of health's women, infants, and children program, and the early childhood education and assistance program, to identify children who may be eligible but not enrolled in coverage;

(d) Contracting with community-based organizations and government entities to support community-based outreach efforts to help families apply for coverage. These efforts should be targeted to the populations least likely to be covered. The authority shall provide informational materials for use by government entities and community-based organizations in their outreach activities, and should identify any available federal matching funds to support these efforts;

(e) Development and dissemination of materials to engage and inform parents and families statewide on issues such as: The benefits of health insurance coverage; the appropriate use of health services, including primary care provided by health care practitioners licensed under chapters 18.71, 18.57, 18.36A, and 18.79 RCW, and emergency services; the value of a medical home, well-child services and immunization, and other preventive health services with linkages to department of health child profile efforts; identifying and managing chronic conditions such as asthma and diabetes; and the value of good nutrition and physical activity;

(f) An evaluation of the outreach and education efforts, based upon clear, cost-effective outcome measures that are included in contracts with entities that undertake components of the outreach and education effort;

(g) An implementation plan to develop online application capability that is integrated with the automated client eligibility system, and to develop data linkages with the office of the superintendent of public instruction for free and reduced-price lunch enrollment information and the department of children, youth, and families for child care subsidy program enrollment information.

(7) The authority shall take action to increase the number of primary care physicians providing dental disease preventive services including oral health screenings, risk assessment, family education, the application of fluoride varnish, and referral to a dentist as needed.

(8) The department shall monitor the rates of substitution between private-sector health care coverage and the coverage provided under this section. [2018 c 58 § 2; 2011 1st sp.s. c 33 § 2; 2011 1st sp.s. c 15 § 21; 2009 c 463 § 2; 2007 c 5 § 2.]

Reviser's note: Chapter 33, Laws of 2011 1st sp.s. took effect April 1, 2011, but amended 2011 1st sp.s. c 15, which took effect July 1, 2011.

Effective date—2018 c 58: See note following RCW 28A.655.080.

Contingent effective dates—2011 1st sp.s. c 33: "(1) Section 1 of this act takes effect if section 21, chapter 15, Laws of 2011 1st sp. sess. is not enacted into law.

(2) Section 2 of this act takes effect if section 21, chapter 15, Laws of 2011 1st sp. sess. is enacted into law." [2011 1st sp.s. c 33 § 3.]

Effective date—2011 1st sp.s. c 33: "Subject to section 3 of this act, 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 April 1, 2011." [2011 1st sp.s. c 33 § 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.

Findings—Intent—2009 c 463: "The legislature finds that substantial progress has been made toward achieving the equally important goals set in 2007 that all children in Washington state have health care coverage by 2010 and that child health outcomes improve. The legislature also finds that continued steps are necessary to reach the goals that all children in Washington state shall have access to the health services they need to be healthy and ready to learn and that key measures of child health outcomes will show year by year improvement. The legislature further finds that reaching these goals is integral to the state's ability to weather the current economic crisis. The recent reauthorization of the federal children's health insurance program provides additional opportunities for the state to reach these goals. In view of these important objectives, the legislature intends that the apple health for kids program be managed actively across administrations in the department of social and health services, and across state and local agencies, with clear accountability for achieving the intended program outcomes. The legislature further intends that the department continue the implementation of the apple health for kids program with a commitment to fully utilizing the new program identity with appropriate materials." [2009 c 463 § 1.]

Short title—2009 c 463: "This act may be known and cited as the apple health for kids act." [2009 c 463 § 5.]

74.09.4701 Apple health for kids—Unemployment compensation. For apple health for kids, the department 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 family income, eligibility, and payment levels. [2011 c 4 § 19.]

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

74.09.475 Newborn delivery services to medical assistance clients—Policies and procedures—Reporting. (1) Effective January 1, 2018, the authority shall require that all health care facilities that provide newborn delivery services to medical assistance clients establish policies and procedures to provide:

(a) Skin-to-skin placement of the newborn on the mother's chest immediately following birth to promote the initiation of breastfeeding, except as otherwise indicated by authority guidelines; and

(b) Room-in practices in which a newborn and a mother share the same room for the duration of their postdelivery stay at the facility, except as otherwise indicated by authority guidelines.

(2) The authority shall provide guidelines for hospitals to use when establishing policies and procedures for services under subsection (1) of this section, including circumstances in which providing the services is not appropriate.

(3) The authority shall require managed care organizations to report on the frequency with which each facility they contract with is able to adhere to the policies and procedures and the most common reasons for nonadherence. The authority shall include a summary of this information in the biennial report required under RCW 74.09.480(3). [2017 c 294 § 2.]

Findings—2017 c 294: "(1) The legislature finds that the state has an interest in assuring that children are given the opportunity to have a healthy start in life. Because approximately half of all births in Washington state are funded by state resources, and over eight hundred thousand children in Washington state are enrolled in the apple health program, the state is in a unique position to make a difference in the health of children in Washington.

(2) The legislature also finds that there may be gaps in programs that could greatly benefit children. Where programs may benefit children in their early stages of development, the state must assure they receive these benefits. Where children are not receiving services because the public is unaware of the services, opportunities for outreach must be explored.

(3) The legislature additionally finds that several hospitals have begun adopting the best practices of the baby-friendly hospital initiative. The state can use its resources to encourage hospitals to adopt some of the most critical components by incorporating the standards into medicaid contracts.

(4) The legislature further finds that providing children with a healthy start also requires promoting healthy pregnancies. In one national survey, pregnant workers said they needed more frequent breaks while pregnant. Prenatal care is also critical for positive birth outcomes, and pregnant women have cited the need for flexibility in their work schedule for the purposes of attending doctor visits. Reasonable accommodations for pregnant women in

the workplace can go a long way to promoting healthy pregnancies without producing an undue hardship on employers." [2017 c 294 § 1.]

74.09.480 Performance measures—Provider rate increases—Report. (1) The authority, in collaboration with the department of health, department of social and health services, health carriers, local public health jurisdictions, children's health care providers including pediatricians, family practitioners, advanced registered nurse practitioners, certified nurse midwives, and pediatric subspecialists, community and migrant health centers, parents, and other purchasers, shall establish a concise set of explicit performance measures that can indicate whether children enrolled in the program are receiving health care through an established and effective medical home, and whether the overall health of enrolled children is improving. Such indicators may include, but are not limited to:

(a) Childhood immunization rates;

(b) Well child care utilization rates, including the use of behavioral and oral health screening, and validated, structured developmental screens using tools, that are consistent with nationally accepted pediatric guidelines and recommended administration schedule, once funding is specifically appropriated for this purpose;

(c) Care management for children with chronic illnesses;

(d) Emergency room utilization;

(e) Visual acuity and eye health;

(f) Preventive oral health service utilization; and

(g) Children's mental health status. In defining these measures the authority shall be guided by the measures provided in RCW 71.36.025.

Performance measures and targets for each performance measure must be established and monitored each biennium, with a goal of achieving measurable, improved health outcomes for the children of Washington state each biennium.

(2) Beginning in calendar year 2009, targeted provider rate increases shall be linked to quality improvement measures established under this section. The authority, in conjunction with those groups identified in subsection (1) of this section, shall develop parameters for determining criteria for increased payment, alternative payment methodologies, or other incentives for those practices and health plans that incorporate evidence-based practice and improve and achieve sustained improvement with respect to the measures.

(3) The department shall provide a report to the governor and the legislature related to provider performance on these measures, as well as the information collected under RCW 74.09.475, beginning in September 2010 for 2007 through 2009 and the authority shall provide the report biennially thereafter. [2017 c 294 § 4; 2011 1st sp.s. c 15 § 22; 2009 c 463 § 4; 2007 c 5 § 4.]

Findings—2017 c 294: See note following RCW 74.09.475.

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—Short title—2009 c 463: See notes following RCW 74.09.470.

74.09.490 Children's mental health—Improving medication management and care coordination. (1) The authority, in consultation with the evidence-based practice institute established in RCW 71.24.061, shall develop and implement policies to improve prescribing practices for treatment of emotional or behavioral disturbances in children, improve the quality of children's mental health therapy through increased use of evidence-based and research-based practices and reduced variation in practice, improve communication and care coordination between primary care and mental health providers, and prioritize care in the family home or care which integrates the family where out-of-home placement is required.

(2) The authority shall identify those children with emotional or behavioral disturbances who may be at high risk due to off-label use of prescription medication, use of multiple medications, high medication dosage, or lack of coordination among multiple prescribing providers, and establish one or more mechanisms to evaluate the appropriateness of the medication these children are using, including but not limited to obtaining second opinions from experts in child psychiatry.

(3) The authority shall review the psychotropic medications of all children under five and establish one or more mechanisms to evaluate the appropriateness of the medication these children are using, including but not limited to obtaining second opinions from experts in child psychiatry.

(4) Within existing funds, the authority shall require a second opinion review from an expert in psychiatry for all prescriptions of one or more antipsychotic medications of all children under eighteen years of age in the foster care system. Thirty days of a prescription medication may be dispensed pending the second opinion review. The second opinion feedback must include discussion of the psychosocial interventions that have been or will be offered to the child and caretaker if appropriate in order to address the behavioral issues brought to the attention of the prescribing physician.

(5) The authority shall track prescriptive practices with respect to psychotropic medications with the goal of reducing the use of medication.

(6) The authority shall promote the appropriate use of cognitive behavioral therapies and other treatments which are empirically supported or evidence-based, in addition to or in the place of prescription medication where appropriate and such interventions are available. [2015 c 283 § 2; 2011 1st sp.s. c 15 § 23; 2007 c 359 § 5.]

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

74.09.492 Children's mental health—Treatment and services—Authority's duties. ***(Effective until January 1, 2020.)*** (1) For children who are eligible for medical assistance and who have been identified as requiring mental health treatment, the authority must oversee the coordination of resources and services through (a) the managed health care system as defined in RCW 74.09.325 and (b) tribal organizations providing health care services. The authority must ensure the child receives treatment and appropriate care based on their assessed needs, regardless of whether the referral occurred through primary care, school-based services, or another practitioner.

(2) The authority must require each managed health care system as defined in RCW 74.09.325 and each behavioral health organization to develop and maintain adequate capac-

ity to facilitate child mental health treatment services in the community or transfers to a behavioral health organization, depending on the level of required care. Managed health care systems and behavioral health organizations must:

(a) Follow up with individuals to ensure an appointment has been secured;

(b) Coordinate with and report back to primary care provider offices on individual treatment plans and medication management, in accordance with patient confidentiality laws;

(c) Provide information to health plan members and primary care providers about the behavioral health resource line available twenty-four hours a day, seven days a week; and

(d) Maintain an accurate list of providers contracted to provide mental health services to children and youth. The list must contain current information regarding the providers' availability to provide services. The current list must be made available to health plan members and primary care providers.

(3) This section expires June 30, 2020. [2017 c 202 § 2.]

Findings—Intent—2017 c 202: "The legislature finds that children and their families face systemic barriers to accessing necessary mental health services. These barriers include a workforce shortage of mental health providers throughout the system of care. Of particular concern are shortages of providers in underserved rural areas of our state and a shortage of providers statewide who can deliver culturally and linguistically appropriate services. The legislature further finds that greater coordination across systems, including early learning, K-12 education, and health care, is necessary to provide children and their families with coordinated care.

The legislature further finds that until mental health and physical health services are fully integrated in the year 2020, children who are eligible for medicaid services and require mental health treatment should receive coordinated mental health and physical health services to the fullest extent possible.

The legislature further finds that in 2013, the department of social and health services and the health care authority reported that only forty percent of the children on medicaid who had mental health treatment needs were receiving services and that mental health treatment needs increase with the number of adverse childhood experiences that a child has undergone.

The legislature further finds that children with mental health service needs have higher rates of emergency room use, criminal justice system involvement, and an increased risk of homelessness, and that trauma-informed care can mitigate some of these negative outcomes.

Therefore, the legislature intends to implement recommendations from the children's mental health work group, as reported in December 2016, in order to improve mental health care access for children and their families through the early learning, K-12 education, and health care systems. The legislature further intends to encourage providers to use behavioral health therapies and other therapies that are empirically supported or evidence-based and only prescribe medications for children and youth as a last resort." [2017 c 202 § 1.]

74.09.495 Behavioral health services—Access by children—Report. ***(Effective until January 1, 2020.)*** (1) To better assure and understand issues related to network adequacy and access to services, the authority and the department shall report to the appropriate committees of the legislature by December 1, 2017, and annually thereafter, on the status of access to behavioral health services for children [from] birth through age seventeen using data collected pursuant to RCW 70.320.050.

(2) At a minimum, the report must include the following components broken down by age, gender, and race and ethnicity:

(a) The percentage of discharges for patients ages six through seventeen who had a visit to the emergency room with a primary diagnosis of mental health or alcohol or other drug dependence during the measuring year and who had a follow-up visit with any provider with a corresponding primary diagnosis of mental health or alcohol or other drug dependence within thirty days of discharge;

(b) The percentage of health plan members with an identified mental health need who received mental health services during the reporting period;

(c) The percentage of children served by behavioral health organizations, including the types of services provided;

(d) The number of children's mental health providers available in the previous year, the languages spoken by those providers, and the overall percentage of children's mental health providers who were actively accepting new patients; and

(e) Data related to mental health and medical services for eating disorder treatment in children and youth by county, including the number of:

(i) Eating disorder diagnoses;

(ii) Patients treated in outpatient, residential, emergency, and inpatient care settings; and

(iii) Contracted providers specializing in eating disorder treatment and the overall percentage of those providers who were actively accepting new patients during the reporting period. [2018 c 175 § 3; 2017 c 226 § 6; 2017 c 202 § 3; 2016 c 96 § 3.]

Findings—Intent—2018 c 175: "The legislature finds that the children's mental health work group established in chapter 96, Laws of 2016 reported recommendations in December 2016 related to increasing access to adequate, appropriate, and culturally and linguistically relevant mental health services for children and youth. The legislature further finds that legislation implementing many of the recommendations of the children's mental health work group was enacted in 2017. Despite these gains, barriers to service remain and additional work is required to assist children with securing adequate mental health treatment. The legislature further finds that by January 1, 2020, the community behavioral health program must be fully integrated in a managed care health system that provides behavioral and physical health care services to medicaid clients. Therefore, it is the intent of the legislature to reestablish the children's mental health work group through December 2020 and to implement additional recommendations from the work group in order to improve mental health care access for children and their families." [2018 c 175 § 1.]

Sustainable solutions for the integration of behavioral and physical health—2017 c 226: See note following RCW 74.09.497.

Findings—Intent—2017 c 202: See note following RCW 74.09.492.

Findings—Intent—2016 c 96: "(1) The legislature understands that adverse childhood experiences, such as family mental health issues, substance abuse, serious economic hardship, and domestic violence, all increase the likelihood of developmental delays and later health and mental health problems. The legislature further understands that early intervention services for children and families at high risk for adverse childhood experience help build secure parent-child attachment and bonding, which allows young children to thrive and form strong relationships in the future. The legislature finds that early identification and intervention are critical for children exhibiting aggressive or depressive behaviors indicative of early mental health problems. The legislature intends to improve access to adequate, appropriate, and culturally responsive mental health services for children and youth. The legislature further intends to encourage the use of behavioral health therapies and other therapies that are empirically supported or evidence-based and only prescribe medications for children and youth as a last resort.

(2) The legislature finds that nearly half of Washington's children are enrolled in medicaid and have a higher incidence of serious health problems compared to children who have commercial insurance. The legislature recognizes that disparities also exist in the diagnosis and initiation of treatment services for children of color, with studies demonstrating that children of color are diagnosed and begin receiving early interventions at a later age. The legislature finds that within the current system of care, families face barriers to receiving a full range of services for children experiencing behavioral health problems. The legislature intends to identify what network adequacy requirements, if strengthened, would increase access, continuity, and coordination of behavioral health services for children and families. The legislature

further intends to encourage managed care plans and behavioral health organizations to contract with the same providers that serve children so families are not required to duplicate mental health screenings, and to recommend provider rates for mental health services to children and youth which will ensure an adequate network and access to quality based care.

(3) The legislature recognizes that early and accurate recognition of behavioral health issues coupled with appropriate and timely intervention enhances health outcomes while minimizing overall expenditures. The legislature intends to assure that annual depression screenings are done consistently with the highly vulnerable medicaid population and that children and families benefit from earlier access to services." [2016 c 96 § 1.]

74.09.495 Access to children's behavioral health services—Report to legislature. ***(Effective January 1, 2020.)*** (1) To better assure and understand issues related to network adequacy and access to services, the authority shall report to the appropriate committees of the legislature by December 1, 2017, and annually thereafter, on the status of access to behavioral health services for children from birth through age seventeen using data collected pursuant to RCW 70.320.050.

(2) At a minimum, the report must include the following components broken down by age, gender, and race and ethnicity:

(a) The percentage of discharges for patients ages six through seventeen who had a visit to the emergency room with a primary diagnosis of mental health or alcohol or other drug dependence during the measuring year and who had a follow-up visit with any provider with a corresponding primary diagnosis of mental health or alcohol or other drug dependence within thirty days of discharge;

(b) The percentage of health plan members with an identified mental health need who received mental health services during the reporting period;

(c) The percentage of children served by behavioral health administrative services organizations and managed care organizations, including the types of services provided;

(d) The number of children's mental health providers available in the previous year, the languages spoken by those providers, and the overall percentage of children's mental health providers who were actively accepting new patients; and

(e) Data related to mental health and medical services for eating disorder treatment in children and youth by county, including the number of:

(i) Eating disorder diagnoses;

(ii) Patients treated in outpatient, residential, emergency, and inpatient care settings; and

(iii) Contracted providers specializing in eating disorder treatment and the overall percentage of those providers who were actively accepting new patients during the reporting period. [2019 c 325 § 4002; 2018 c 175 § 3; 2017 c 226 § 6; 2017 c 202 § 3; 2016 c 96 § 3.]

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

Findings—Intent—2018 c 175: "The legislature finds that the children's mental health work group established in chapter 96, Laws of 2016 reported recommendations in December 2016 related to increasing access to adequate, appropriate, and culturally and linguistically relevant mental health services for children and youth. The legislature further finds that legislation implementing many of the recommendations of the children's mental health work group was enacted in 2017. Despite these gains, barriers to service remain and additional work is required to assist children with securing adequate mental health treatment. The legislature further finds that by January 1, 2020, the community behavioral health program must be fully integrated in a managed care health system that provides behavioral and physical health care services to medicaid clients. Therefore, it is the intent of the legislature to reestablish the children's mental health work group through December 2020 and to implement additional recommendations from the work group in order to improve mental health care access for children and their families." [2018 c 175 § 1.]

Sustainable solutions for the integration of behavioral and physical health—2017 c 226: See note following RCW 74.09.497.

Findings—Intent—2017 c 202: See note following RCW 74.09.492.

Findings—Intent—2016 c 96: "(1) The legislature understands that adverse childhood experiences, such as family mental health issues, substance abuse, serious economic hardship, and domestic violence, all increase the likelihood of developmental delays and later health and mental health problems. The legislature further understands that early intervention services for children and families at high risk for adverse childhood experience help build secure parent-child attachment and bonding, which allows young children to thrive and form strong relationships in the future. The legislature finds that early identification and intervention are critical for children exhibiting aggressive or depressive behaviors indicative of early mental health problems. The legislature intends to improve access to adequate, appropriate, and culturally responsive mental health services for children and youth. The legislature further intends to encourage the use of behavioral health therapies and other therapies that are empirically supported or evidence-based and only prescribe medications for children and youth as a last resort.

(2) The legislature finds that nearly half of Washington's children are enrolled in medicaid and have a higher incidence of serious health problems compared to children who have commercial insurance. The legislature recognizes that disparities also exist in the diagnosis and initiation of treatment services for children of color, with studies demonstrating that children of color are diagnosed and begin receiving early interventions at a later age. The legislature finds that within the current system of care, families face barriers to receiving a full range of services for children experiencing behavioral health problems. The legislature intends to identify what network adequacy requirements, if strengthened, would increase access, continuity, and coordination of behavioral health services for children and families. The legislature further intends to encourage managed care plans and behavioral health organizations to contract with the same providers that serve children so families are not required to duplicate mental health screenings, and to recommend provider rates for mental health services to children and youth which will ensure an adequate network and access to quality based care.

(3) The legislature recognizes that early and accurate recognition of behavioral health issues coupled with appropriate and timely intervention enhances health outcomes while minimizing overall expenditures. The legislature intends to assure that annual depression screenings are done consistently with the highly vulnerable medicaid population and that children and families benefit from earlier access to services." [2016 c 96 § 1.]

74.09.4951 Children's mental health work group—Advisory groups—Report to governor and legislature. ***(Expires December 30, 2020.)*** (1) A children's mental health work group is established to identify barriers to and opportunities for accessing mental health services for children and families and to advise the legislature on statewide mental health services for this population.

(2) The work group shall consist of members and alternates as provided in this subsection. Members must represent the regional, racial, and cultural diversity of all children and families in the state. Members of the children's mental health work group created in chapter 96, Laws of 2016, and serving on the work group as of December 1, 2017, may continue to serve as members of the work group without reappointment.

(a) The president of the senate shall appoint one member and one alternate from each of the two largest caucuses in the senate.

(b) The speaker of the house of representatives shall appoint one member and one alternate from each of the two largest caucuses in the house of representatives.

(c) The governor shall appoint six members representing the following state agencies and offices: The department of children, youth, and families; the department of social and health services; the health care authority; the department of

health; the office of homeless youth prevention and protection programs; and the office of the governor.

(d) The governor shall appoint one member representing each of the following:

(i) Behavioral health organizations;

(ii) Community mental health agencies;

(iii) Medicaid managed care organizations;

(iv) A regional provider of co-occurring disorder services;

(v) Pediatricians or primary care providers;

(vi) Providers specializing in infant or early childhood mental health;

(vii) Child health advocacy groups;

(viii) Early learning and child care providers;

(ix) The evidence-based practice institute;

(x) Parents or caregivers who have been the recipient of early childhood mental health services;

(xi) An education or teaching institution that provides training for mental health professionals;

(xii) Foster parents;

(xiii) Providers of culturally and linguistically appropriate health services to traditionally underserved communities;

(xiv) Pediatricians located east of the crest of the Cascade mountains; and

(xv) Child psychiatrists.

(e) The governor shall request participation by a representative of tribal governments.

(f) The superintendent of public instruction shall appoint one representative from the office of the superintendent of public instruction.

(g) The insurance commissioner shall appoint one representative from the office of the insurance commissioner.

(h) The work group shall choose its cochairs, one from among its legislative members and one from among the executive branch members. The representative from the health care authority shall convene at least two, but not more than four, meetings of the work group each year.

(i) The cochairs may invite additional members of the house ofrepresentatives and the senate to participate in work groupactivities, including as leaders of advisory groups to the workgroup. These legislators are not required to be formally appointedmembers of the work group in order to participate in or leadadvisory groups.

(3) The work group shall:

(a) Monitor the implementation of enacted legislation, programs, and policies related to children's mental health, including provider payment for depression screenings for youth and new mothers, consultation services for child care providers caring for children with symptoms of trauma, home visiting services, and streamlining agency rules for providers of behavioral health services;

(b) Consider system strategies to improve coordination and remove barriers between the early learning, K-12 education, and health care systems; and

(c) Identify opportunities to remove barriers to treatment and strengthen mental health service delivery for children and youth.

(4) At the direction of the cochairs, the work group may convene advisory groups to evaluate specific issues and report related findings and recommendations to the full work group.

(5)(a) The work group shall convene an advisory group to develop a funding model for:

(i) The partnership access line activities described in RCW 71.24.061, including the partnership access line for moms and kids and community referral facilitation;

(ii) Delivering partnership access line services to educational service districts for the training and support of school staff managing children with challenging behaviors; and

(iii) Expanding partnership access line consultation services to include consultation for health care professionals serving adults.

(b) The work group cochairs shall invite representatives from the following organizations and interests to participate as advisory group members under this subsection:

(i) Private insurance carriers;

(ii) Medicaid managed care plans;

(iii) Self-insured organizations;

(iv) Seattle children's hospital;

(v) The partnership access line;

(vi) The office of the insurance commissioner;

(vii) The University of Washington school of medicine; and

(viii) Other organizations and individuals, as determined by the cochairs.

(c) The funding model must build upon previous funding model efforts by the health care authority, including work completed pursuant to chapter 288, Laws of 2018. The funding model must:

(i) Determine the annual cost of operating the partnership access line and its various components and collect a proportional share of program cost from each health insurance carrier; and

(ii) Differentiate between partnership access line activities eligible for medicaid funding and activities that are nonmedicaid eligible.

(d) By December 1, 2019, the advisory group formed under this subsection must deliver the funding model and any associated recommendations to the work group.

(6) Staff support for the work group, including administration of work group meetings and preparation of the updated report required under subsection (8) of this section, must be provided by the health care authority. Additional staff support for legislative members of the work group may be provided by senate committee services and the house of representatives office of program research.

(7) Legislative members of the work group are reimbursed for travel expenses in accordance with RCW 44.04.120. 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. Advisory group members who are not members of the work group are not entitled to reimbursement.

(8) The work group shall update the findings and recommendations reported to the legislature by the children's mental health work group in December 2016 pursuant to chapter 96, Laws of 2016. The work group must submit the updated report to the governor and the appropriate committees of the legislature by December 1, 2020.

(9) This section expires December 30, 2020. [2019 c 360 § 2; 2018 c 175 § 2.]

Findings—Intent—2019 c 360: "(1) The legislature finds that the children's mental health work group established in chapter 96, Laws of 2016 reported recommendations related to increasing access to mental health services for children and youth and that many of those recommendations were adopted by the 2017 and 2018 legislatures. The legislature further finds that additional work is needed to improve mental health support for children and families and that the children's mental health work group was reestablished for this purpose in chapter 175, Laws of 2018.

(2) The legislature finds that there is a workforce shortage of behavioral health professionals and that increasing medicaid rates to a level that is equal to medicare rates will increase the number of providers who will serve children and families on medicaid. Further, the legislature finds that there is a need to increase the cultural and linguistic diversity among children's behavioral health professionals and that hiring practices, professional training, and high-quality translations of accreditation and licensing exams should be implemented to incentivize this diversity in the workforce.

(3) Therefore, the legislature intends to implement the recommendations adopted by the children's mental health work group in January 2019, in order to improve mental health care access for children and their families." [2019 c 360 § 1.]

74.09.497 Authority review of payment codes available to health plans and providers related to primary care and behavioral health—Requirements—Principles considered—Matrices—Reporting. (1) By August 1, 2017, the authority must complete a review of payment codes available to health plans and providers related to primary care and behavioral health. The review must include adjustments to payment rules if needed to facilitate bidirectional integration. The review must involve stakeholders and include consideration of the following principles to the extent allowed by federal law:

(a) Payment rules must allow professionals to operate within the full scope of their practice;

(b) Payment rules should allow medically necessary behavioral health services for covered patients to be provided in any setting;

(c) Payment rules should allow medically necessary primary care services for covered patients to be provided in any setting;

(d) Payment rules and provider communications related to payment should facilitate integration of physical and behavioral health services through multifaceted models, including primary care behavioral health, whole-person care in behavioral health, collaborative care, and other models;

(e) Payment rules should be designed liberally to encourage innovation and ease future transitions to more integrated models of payment and more integrated models of care;

(f) Payment rules should allow health and behavior codes to be reimbursed for all patients in primary care settings as provided by any licensed behavioral health professional operating within their scope of practice, including but not limited to psychiatrists, psychologists, psychiatric advanced registered nurse professionals, physician assistants working with a supervising psychiatrist, psychiatric nurses, mental health counselors, social workers, chemical dependency professionals, chemical dependency professional trainees, marriage and family therapists, and mental health counselor associates under the supervision of a licensed clinician;

(g) Payment rules should allow health and behavior codes to be reimbursed for all patients in behavioral health settings as provided by any licensed health care provider within the provider's scope of practice;

(h) Payment rules which limit same-day billing for providers using the same provider number, require prior authorization for low-level or routine behavioral health care, or prohibit payment when the patient is not present should be implemented only when consistent with national coding conventions and consonant with accepted best practices in the field.

(2) Concurrent with the review described in subsection (1) of this section, the authority must create matrices listing the following codes available for provider payment through medical assistance programs: All behavioral health-related codes; and all physical health-related codes available for payment when provided in licensed behavioral health agencies. The authority must clearly explain applicable payment rules in order to increase awareness among providers, standardize billing practices, and reduce common and avoidable billing errors. The authority must disseminate this information in a manner calculated to maximally reach all relevant plans and providers. The authority must update the provider billing guide to maintain consistency of information.

(3) The authority must inform the governor and relevant committees of the legislature by letter of the steps taken pursuant to this section and results achieved once the work has been completed. [2017 c 226 § 2.]

Contingent effective date—2017 c 226 § 2: "Section 2 of this act takes effect only if Engrossed Substitute House Bill No. 1340 (including any later amendments or substitutes) is not signed into law by the governor by July 23, 2017." [2017 c 226 § 10.] Engrossed Substitute House Bill No. 1340 was not signed into law by July 23, 2017.

Sustainable solutions for the integration of behavioral and physical health—2017 c 226: "Health transformation in Washington state requires a multifaceted approach to implement sustainable solutions for the integration of behavioral and physical health. Effective integration requires a holistic approach and cannot be limited to one strategy or model. Bidirectional integration of primary care and behavioral health is a foundational strategy to reduce health disparities and provide better care coordination for patients regardless of where they choose to receive care.

An important component to health care integration supported both by research and experience in Washington is primary care behavioral health, a model in which behavioral health providers, sometimes called behavioral health consultants, are fully integrated in primary care. The primary care behavioral health model originated more than two decades ago, has become standard practice nationally in patient centered medical homes, and has been endorsed as a viable integration strategy by Washington's Dr. Robert J. Bree Collaborative.

Primary care settings are a gateway for many individuals with behavioral health and primary care needs. An estimated one in four primary care patients have an identifiable behavioral health need and as many as seventy percent of primary care visits are impacted by a psychosocial component. A behavioral health consultant engages primary care patients and their caregivers on the same day as a medical visit, often in the same exam room. This warm hand-off approach fosters coordinated whole-person care, increases access to behavioral health services, and reduces stigma and cultural barriers in a cost-effective manner. Patients are provided evidence-based brief interventions and skills training, with more severe needs being effectively engaged, assessed, and referred to appropriate specialized care.

While the benefits of primary care behavioral health are not restricted to children, the primary care behavioral health model also provides a unique opportunity to engage children who have a strong relationship with primary care, identify problems early, and assure healthy development. Investment in primary care behavioral health creates opportunities for prevention and early detection that pay dividends throughout the life cycle.

The legislature also recognizes that for individuals with more complex behavioral health disorders, there are tremendous barriers to accessing primary care. Whole-person care in behavioral health is an evidence-based model for integrating primary care into behavioral health settings where these patients already receive care. Health disparities among people with

behavioral health disorders have been well-documented for decades. People with serious mental illness or substance use disorders continue to experience multiple chronic health conditions and dramatically reduced life expectancy while also constituting one of the highest-cost and highest-risk populations. Two-thirds of premature deaths are due to preventable or treatable medical conditions such as cardiovascular, pulmonary, and infectious diseases, and forty-four percent of all cigarettes consumed nationally are smoked by people with serious mental illness.

The whole-person care in behavioral health model allows behavioral health providers to take responsibility for managing the full array of physical health needs, providing routine basic health screening, and ensuring integrated primary care by actively coordinating with or providing on-site primary care services.

Providers in Washington need guidance on how to effectively implement bidirectional integration models in a manner that is also financially sustainable. Payment methodologies must be scrutinized to remove nonessential restrictions and limitations that restrict the scope of practice of behavioral health professionals, impede same-day billing for behavioral health and primary care services, abet billing errors, and stymie innovation that supports wellness and health integration." [2017 c 226 § 1.]

74.09.500 Medical assistance—Established. There is hereby established a new program of federal-aid assistance to be known as medical assistance to be administered by the authority. The authority is authorized to comply with the federal requirements for the medical assistance program provided in the social security act and particularly Title XIX of Public Law (89-97), as amended, in order to secure federal matching funds for such program. [2011 1st sp.s. c 15 § 24; 1979 c 141 § 343; 1967 ex.s. c 30 § 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.

74.09.510 Medical assistance—Eligibility. Medical assistance may be provided in accordance with eligibility requirements established by the authority, as defined in the social security Title XIX state plan for mandatory categorically needy persons and:

(1) Individuals who would be eligible for cash assistance except for their institutional status;

(2) Individuals who are under twenty-one years of age, who would be eligible for medicaid, but do not qualify as dependent children and who are in (a) foster care, (b) subsidized adoption, (c) a nursing facility or an intermediate care facility for persons with intellectual disabilities, or (d) inpatient psychiatric facilities;

(3) Individuals who:

(a) Are under twenty-one years of age;

(b) On or after July 22, 2007, were in foster care under the legal responsibility of the department of social and health services, the department of children, youth, and families, or a federally recognized tribe located within the state; and

(c) On their eighteenth birthday, were in foster care under the legal responsibility of the department of children, youth, and families or a federally recognized tribe located within the state;

(4) Persons who are aged, blind, or disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash assistance if they were not institutionalized;

(5) Categorically eligible individuals who meet the income and resource requirements of the cash assistance programs;

(6) Individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act;

(7) Children and pregnant women allowed by federal statute for whom funding is appropriated;

(8) Working individuals with disabilities authorized under section 1902(a)(10)(A)(ii) of the social security act for whom funding is appropriated;

(9) Other individuals eligible for medical services under RCW 74.09.700 for whom federal financial participation is available under Title XIX of the social security act;

(10) Persons allowed by section 1931 of the social security act for whom funding is appropriated; and

(11) Women who: (a) Are under sixty-five years of age; (b) have been screened for breast and cervical cancer under the national breast and cervical cancer early detection program administered by the department of health or tribal entity and have been identified as needing treatment for breast or cervical cancer; and (c) are not otherwise covered by health insurance. Medical assistance provided under this subsection is limited to the period during which the woman requires treatment for breast or cervical cancer, and is subject to any conditions or limitations specified in the omnibus appropriations act. [2017 3rd sp.s. c 6 § 337; 2013 2nd sp.s. c 10 § 6. Prior: 2011 1st sp.s. c 36 § 9; 2011 1st sp.s. c 15 § 25; 2010 c 94 § 24; 2007 c 315 § 1; prior: 2001 2nd sp.s. c 15 § 3; 2001 1st sp.s. c 4 § 1; prior: 1997 c 59 § 14; 1997 c 58 § 201; 1991 sp.s. c 8 § 8; 1989 1st ex.s. c 10 § 8; 1989 c 87 § 2; 1985 c 5 § 2; 1981 2nd ex.s. c 3 § 5; 1981 1st ex.s. c 6 § 20; 1981 c 8 § 19; 1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

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 2nd sp.s. c 10: See note following RCW 74.62.030.

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

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.

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

Findings—Intent—2001 2nd sp.s. c 15: See note following RCW 74.09.540.

Additional notes found at www.leg.wa.gov

74.09.515 Medical assistance—Coverage for youth released from confinement. ***(Effective until January 1, 2020.)*** (1) The authority shall adopt rules and policies providing that when youth who were enrolled in a medical assistance program immediately prior to confinement are released from confinement, their medical assistance coverage will be fully reinstated on the day of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law.

(2) The authority, in collaboration with the department, county juvenile court administrators, and behavioral health organizations, shall establish procedures for coordination

between department field offices, juvenile rehabilitation administration institutions, and county juvenile courts that result in prompt reinstatement of eligibility and speedy eligibility determinations for youth who are likely to be eligible for medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services' applications on behalf of confined youth in anticipation of their release from confinement;

(b) Expeditious review of applications filed by or on behalf of confined youth and, to the extent practicable, completion of the review before the youth is released; and

(c) Mechanisms for providing medical assistance services' identity cards to youth eligible for medical assistance services immediately upon their release from confinement.

(3) For purposes of this section, "confined" or "confinement" means detained in a facility operated by or under contract with the department of social and health services, juvenile rehabilitation administration, or detained in a juvenile detention facility operated under chapter 13.04 RCW.

(4) The authority shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined youth who is likely to be eligible for a medical assistance program. [2014 c 225 § 100; 2011 1st sp.s. c 15 § 26; 2007 c 359 § 8.]

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

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

74.09.515 Medical assistance—Coverage for youth released from confinement. ***(Effective January 1, 2020.)*** (1) The authority shall adopt rules and policies providing that when youth who were enrolled in a medical assistance program immediately prior to confinement are released from confinement, their medical assistance coverage will be fully reinstated on the day of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law.

(2) The authority, in collaboration with the department, county juvenile court administrators, managed care organizations, the department of children, youth, and families, and behavioral health administrative services organizations, shall establish procedures for coordination among field offices, juvenile rehabilitation institutions, and county juvenile courts that result in prompt reinstatement of eligibility and speedy eligibility determinations for youth who are likely to be eligible for medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services' applications on behalf of confined youth in anticipation of their release from confinement;

(b) Expeditious review of applications filed by or on behalf of confined youth and, to the extent practicable, completion of the review before the youth is released; and

(c) Mechanisms for providing medical assistance services' identity cards to youth eligible for medical assistance services immediately upon their release from confinement.

(3) For purposes of this section, "confined" or "confinement" means detained in a juvenile rehabilitation facility operated by or under contract with the department of children, youth, and families, or detained in a juvenile detention facility operated under chapter 13.04 RCW.

(4) The authority shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined youth who is likely to be eligible for a medical assistance program. [2019 c 325 § 4003; 2014 c 225 § 100; 2011 1st sp.s. c 15 § 26; 2007 c 359 § 8.]

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

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

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

74.09.520 Medical assistance—Care and services included—Funding limitations. (1) The term "medical assistance" may include the following care and services subject to rules adopted by the authority or department: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and X-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary or director; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, neither the authority nor the department may cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care for clients requiring health-related consultation for assessment and service planning may be reviewed by a nurse.

(c) The department shall determine by rule which clients have a health-related assessment or service planning need requiring registered nurse consultation or review. This defini-

tion may include clients that meet indicators or protocols for review, consultation, or visit.

(3) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(4) Effective July 1, 1989, the authority shall offer hospice services in accordance with available funds.

(5) For Title XIX personal care services administered by aging and disability services administration of the department, the department shall contract with area agencies on aging:

(a) To provide case management services to individuals receiving Title XIX personal care services in their own home; and

(b) To reassess and reauthorize Title XIX personal care services or other home and community services as defined in RCW 74.39A.009 in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive Title XIX personal care services or other home and community services as defined in RCW 74.39A.009; and

(ii) Who, at the time of reassessment and reauthorization, are receiving such services in their own home.

(6) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(7) Subject to the availability of amounts appropriated for this specific purpose, the authority may offer medicare part D prescription drug copayment coverage to full benefit dual eligible beneficiaries.

(8) Effective January 1, 2016, the authority shall require universal screening and provider payment for autism and developmental delays as recommended by the bright futures guidelines of the American academy of pediatrics, as they existed on August 27, 2015. This requirement is subject to the availability of funds.

(9) Subject to the availability of amounts appropriated for this specific purpose, effective January 1, 2018, the authority shall require provider payment for annual depression screening for youth ages twelve through eighteen as recommended by the bright futures guidelines of the American academy of pediatrics, as they existed on January 1, 2017. Providers may include, but are not limited to, primary care providers, public health nurses, and other providers in a clinical setting. This requirement is subject to the availability of funds appropriated for this specific purpose.

(10) Subject to the availability of amounts appropriated for this specific purpose, effective January 1, 2018, the authority shall require provider payment for maternal depression screening for mothers of children ages birth to six months. This requirement is subject to the availability of funds appropriated for this specific purpose. [2017 c 202 § 4; 2015 1st sp.s. c 8 § 2; 2011 1st sp.s. c 15 § 27; 2007 c 3 § 1; 2004 c 141 § 2; 2003 c 279 § 1; 1998 c 245 § 145; 1995 1st sp.s. c 18 § 39; 1994 c 21 § 4. Prior: 1993 c 149 § 10; 1993 c 57 § 1; 1991 sp.s. c 8 § 9; prior: 1991 c 233 § 1; 1991 c 119 § 1; prior: 1990 c 33 § 594; 1990 c 25 § 1; prior: 1989 c 427 § 10; 1989 c 400 § 3; 1985 c 5 § 3; 1982 1st ex.s. c 19 § 4; 1981 1st ex.s. c 6 § 21; 1981 c 8 § 20; 1979 c 141 § 344; 1969 ex.s. c 173 § 11; 1967 ex.s. c 30 § 5.]

Findings—Intent—2017 c 202: "The legislature finds that children and their families face systemic barriers to accessing necessary mental health services. These barriers include a workforce shortage of mental health providers throughout the system of care. Of particular concern are shortages of providers in underserved rural areas of our state and a shortage of providers statewide who can deliver culturally and linguistically appropriate services. The legislature further finds that greater coordination across systems, including early learning, K-12 education, and health care, is necessary to provide children and their families with coordinated care.

The legislature further finds that until mental health and physical health services are fully integrated in the year 2020, children who are eligible for medicaid services and require mental health treatment should receive coordinated mental health and physical health services to the fullest extent possible.

The legislature further finds that in 2013, the department of social and health services and the health care authority reported that only forty percent of the children on medicaid who had mental health treatment needs were receiving services and that mental health treatment needs increase with the number of adverse childhood experiences that a child has undergone.

The legislature further finds that children with mental health service needs have higher rates of emergency room use, criminal justice system involvement, and an increased risk of homelessness, and that trauma-informed care can mitigate some of these negative outcomes.

Therefore, the legislature intends to implement recommendations from the children's mental health work group, as reported in December 2016, in order to improve mental health care access for children and their families through the early learning, K-12 education, and health care systems. The legislature further intends to encourage providers to use behavioral health therapies and other therapies that are empirically supported or evidence-based and only prescribe medications for children and youth as a last resort." [2017 c 202 § 1.]

Findings—2015 1st sp.s. c 8: "(1) The bright futures guidelines issued by the American academy of pediatrics outline recommended well-child visit schedules and universal screening of children for autism and developmental delays. Private health plans established after March 2010 are required to comply with the bright futures guidelines as the standard for preventive services. The federal law does not require medicaid programs to follow the guidelines; however, thirty states completely cover the bright futures guidelines, six states cover all but one well-child screen, and six additional states cover all but developmental and autism screens as part of their medicaid programs.

(2) The 2012 Washington state legislature directed the Washington state institute for public policy to assess the costs and benefits of implementing the guidelines. The research indicates that fewer than half of children with developmental delays are identified before starting school and roughly half of children with autism spectrum disorder are diagnosed only after entering school, by which time significant delays may have occurred and opportunities for treatment may have been missed. Adopting the universal screening guidelines improves early diagnosis and enables early intervention with appropriate therapies and services. The annual cost to society for caring for children with autism or developmental delays can be significant, including cost of services, special education, informal care, and lost productivity. Early intervention and access to appropriate therapies mitigate long-term societal costs and improve the health and opportunity for the child.

(3) The more adverse experiences a child has, such as the burden of family economic hardship and social bias, the greater the likelihood of developmental delays and later health problems. Over forty-six percent of Washington's children have medicaid apple health for kids and have a much greater likelihood of reporting poor to very poor health compared to children who have commercial insurance. Disparities also exist in the diagnosis and initiation of treatment services for children of color. Research shows that children of color are diagnosed later and begin receiving early intervention services

later. This health equity gap can be addressed by identifying and supporting children early through universal screening.

(4) Primary care providers currently see ninety-nine percent of children between birth and three years of age and are uniquely situated to access nearly all children with universal screening." [2015 1st sp.s. c 8 § 1.]

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.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Intent—1989 c 400: See note following RCW 28A.150.390.

Legislative confirmation of effect of 1994 c 21: RCW 43.20B.090.

Additional notes found at www.leg.wa.gov

74.09.521 Medical assistance—Program standards for mental health services for children. ***(Effective until January 1, 2020.)*** (1) To the extent that funds are specifically appropriated for this purpose the authority shall revise its medicaid healthy options managed care and fee-for-service program standards under medicaid, Title XIX of the federal social security act to improve access to mental health services for children who do not meet the behavioral health organization access to care standards. The program standards shall be revised to allow outpatient therapy services to be provided by licensed mental health professionals, as defined in RCW 71.34.020, or by a mental health professional regulated under Title 18 RCW who is under the direct supervision of a licensed mental health professional, and up to twenty outpatient therapy hours per calendar year, including family therapy visits integral to a child's treatment. This section shall be administered in a manner consistent with federal early and periodic screening, diagnosis, and treatment requirements related to the receipt of medically necessary services when a child's need for such services is identified through developmental screening.

(2) The authority and the children's mental health evidence-based practice institute established in RCW 71.24.061 shall collaborate to encourage and develop incentives for the use of prescribing practices and evidence-based and research-based treatment practices developed under RCW 74.09.490 by mental health professionals serving children under this section. [2014 c 225 § 101; 2011 1st sp.s. c 15 § 28; 2009 c 388 § 1; 2007 c 359 § 11.]

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

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

74.09.522 Medical assistance—Agreements with managed health care systems required for services to recipients of temporary assistance for needy families—Principles to be applied in purchasing managed health care—Expiration of subsections. ***(Effective until January 1, 2020.)*** (1) For the purposes of this section:

(a) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under this chapter or other applicable law and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(b) "Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity, acting within their scope of practice, that does not have a written contract to participate in a managed health care system's provider network, but provides health care services to enrollees of programs authorized under this chapter or other applicable law whose health care services are provided by the managed health care system.

(2) The authority shall enter into agreements with managed health care systems to provide health care services to recipients of temporary assistance for needy families under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients statewide;

(b) Agreements in at least one county shall include enrollment of all recipients of temporary assistance for needy families;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the authority may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed twelve months: AND PROVIDED FURTHER, That the authority shall not restrict a recipient's right to terminate enrollment in a system for good cause as established by the authority by rule;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except as authorized by the authority under federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e)(i) In negotiating with managed health care systems the authority shall adopt a uniform procedure to enter into contractual arrangements, to be included in contracts issued or renewed on or after January 1, 2015, including:

(A) Standards regarding the quality of services to be provided;

(B) The financial integrity of the responding system;

(C) Provider reimbursement methods that incentivize chronic care management within health homes, including comprehensive medication management services for patients with multiple chronic conditions consistent with the findings and goals established in RCW 74.09.5223;

(D) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use;

(E) 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;

(F) Provider reimbursement methods within the medical billing processes that incentivize pharmacists or other qualified providers licensed in Washington state to provide comprehensive medication management services consistent with the findings and goals established in RCW 74.09.5223;

(G) Evaluation and reporting on the impact of comprehensive medication management services on patient clinical outcomes and total health care costs, including reductions in emergency department utilization, hospitalization, and drug costs; and

(H) Established consistent processes to incentivize integration of behavioral health services in the primary care setting, promoting care that is integrated, collaborative, colocated, and preventive.

(ii)(A) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(B) Contracts that include the items in (e)(i)(C) through (G) of this subsection must not exceed the rates that would be paid in the absence of these provisions;

(f) The authority shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The authority shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the authority may enter into prepaid capitation contracts that do not include inpatient care;

(h) The authority shall define those circumstances under which a managed health care system is responsible for out-of-plan services and assure that recipients shall not be charged for such services;

(i) Nothing in this section prevents the authority from entering into similar agreements for other groups of people eligible to receive services under this chapter; and

(j) The authority must consult with the federal center for medicare and medicaid innovation and seek funding opportunities to support health homes.

(3) The authority shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate as managed health care systems are seriously considered as contractors. The authority shall coordinate its managed care activities with activities under chapter 70.47 RCW.

(4) The authority shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

(5) The legislature finds that competition in the managed health care marketplace is enhanced, in the long term, by the existence of a large number of managed health care system options for medicaid clients. In a managed care delivery system, whose goal is to focus on prevention, primary care, and improved enrollee health status, continuity in care relationships is of substantial importance, and disruption to clients and health care providers should be minimized. To help ensure these goals are met, the following principles shall guide the authority in its healthy options managed health care purchasing efforts:

(a) All managed health care systems should have an opportunity to contract with the authority to the extent that minimum contracting requirements defined by the authority are met, at payment rates that enable the authority to operate as far below appropriated spending levels as possible, consistent with the principles established in this section.

(b) Managed health care systems should compete for the award of contracts and assignment of medicaid beneficiaries who do not voluntarily select a contracting system, based upon:

(i) Demonstrated commitment to or experience in serving low-income populations;

(ii) Quality of services provided to enrollees;

(iii) Accessibility, including appropriate utilization, of services offered to enrollees;

(iv) Demonstrated capability to perform contracted services, including ability to supply an adequate provider network;

(v) Payment rates; and

(vi) The ability to meet other specifically defined contract requirements established by the authority, including consideration of past and current performance and participation in other state or federal health programs as a contractor.

(c) Consideration should be given to using multiple year contracting periods.

(d) Quality, accessibility, and demonstrated commitment to serving low-income populations shall be given significant weight in the contracting, evaluation, and assignment process.

(e) All contractors that are regulated health carriers must meet state minimum net worth requirements as defined in applicable state laws. The authority shall adopt rules establishing the minimum net worth requirements for contractors that are not regulated health carriers. This subsection does not limit the authority of the Washington state health care authority to take action under a contract upon finding that a contractor's financial status seriously jeopardizes the contractor's ability to meet its contract obligations.

(f) Procedures for resolution of disputes between the authority and contract bidders or the authority and contracting carriers related to the award of, or failure to award, a managed care contract must be clearly set out in the procurement document.

(6) The authority may apply the principles set forth in subsection (5) of this section to its managed health care purchasing efforts on behalf of clients receiving supplemental security income benefits to the extent appropriate.

(7) By April 1, 2016, any contract with a managed health care system to provide services to medical assistance enrollees shall require that managed health care systems offer contracts to behavioral health organizations, mental health providers, or chemical dependency treatment providers to provide access to primary care services integrated into behavioral health clinical settings, for individuals with behavioral health and medical comorbidities.

(8) Managed health care system contracts effective on or after April 1, 2016, shall serve geographic areas that correspond to the regional service areas established in RCW 74.09.870.

(9) A managed health care system shall pay a nonparticipating provider that provides a service covered under this

chapter or other applicable law 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 if the managed health care system has made good faith efforts to contract with the nonparticipating provider.

(10) For services covered under this chapter or other applicable law to medical assistance or medical care services enrollees and provided on or after August 24, 2011, nonparticipating providers must accept as payment in full the amount paid by the managed health care system under subsection (9) of this section in addition to any deductible, coinsurance, or copayment that is due from the enrollee for the service provided. An enrollee is not liable to any nonparticipating provider for covered services, except for amounts due for any deductible, coinsurance, or copayment under the terms and conditions set forth in the managed health care system contract to provide services under this section.

(11) 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.

(12) Payments under RCW 74.60.130 are exempt from this section.

(13) Subsections (9) through (11) of this section expire July 1, 2021. [2018 c 201 § 7017; 2015 c 256 § 1; 2014 c 225 § 55; 2013 2nd sp.s. c 17 § 13; 2013 c 261 § 2. Prior: 2011 1st sp.s. c 15 § 29; 2011 1st sp.s. c 9 § 2; 2011 c 316 § 4; prior: 1997 c 59 § 15; 1997 c 34 § 1; 1989 c 260 § 2; 1987 1st ex.s. c 5 § 21; 1986 c 303 § 2.]

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

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

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—2011 1st sp.s. c 9: See note following RCW 70.47.020.

Legislative findings—Intent—1986 c 303: "(1) The legislature finds that:

(a) Good health care for indigent persons is of importance to the state;

(b) To ensure the availability of a good level of health care, efforts must be made to encourage cost consciousness on the part of providers and consumers, while maintaining medical assistance recipients within the mainstream of health care delivery;

(c) Managed health care systems have been found to be effective in controlling costs while providing good health care services;

(d) By enrolling medical assistance recipients within managed health care systems, the state's goal is to ensure that medical assistance recipients receive at least the same quality of care they currently receive.

(2) It is the intent of the legislature to develop and implement new strategies that promote the use of managed health care systems for medical assistance recipients by establishing prepaid capitated programs for both inpatient and outpatient services." [1986 c 303 § 1.]

Additional notes found at www.leg.wa.gov

74.09.522 Medical assistance—Agreements with managed health care systems for provision of services to medicaid recipients—Principles to be applied in purchasing managed health care—Expiration of subsections. ***(Effective January 1, 2020.)*** (1) For the purposes of this section:

(a) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under this chapter or other applicable law and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(b) "Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity, acting within their scope of practice, that does not have a written contract to participate in a managed health care system's provider network, but provides health care services to enrollees of programs authorized under this chapter or other applicable law whose health care services are provided by the managed health care system.

(2) The authority shall enter into agreements with managed health care systems to provide health care services to recipients of medicaid under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients statewide;

(b) Agreements in at least one county shall include enrollment of all recipients of programs as allowed for in the approved state plan amendment or federal waiver for Washington state's medicaid program;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the authority may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed twelve months: AND PROVIDED FURTHER, That the authority shall not restrict a recipient's right to terminate enrollment in a system for good cause as established by the authority by rule;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except as authorized by the authority under federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e)(i) In negotiating with managed health care systems the authority shall adopt a uniform procedure to enter into contractual arrangements, including:

(A) Standards regarding the quality of services to be provided;

(B) The financial integrity of the responding system;

(C) Provider reimbursement methods that incentivize chronic care management within health homes, including comprehensive medication management services for patients with multiple chronic conditions consistent with the findings and goals established in RCW 74.09.5223;

(D) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use;

(E) 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;

(F) Provider reimbursement methods within the medical billing processes that incentivize pharmacists or other qualified providers licensed in Washington state to provide comprehensive medication management services consistent with the findings and goals established in RCW 74.09.5223;

(G) Evaluation and reporting on the impact of comprehensive medication management services on patient clinical outcomes and total health care costs, including reductions in emergency department utilization, hospitalization, and drug costs; and

(H) Established consistent processes to incentivize integration of behavioral health services in the primary care setting, promoting care that is integrated, collaborative, colocated, and preventive.

(ii)(A) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(B) Contracts that include the items in (e)(i)(C) through (G) of this subsection must not exceed the rates that would be paid in the absence of these provisions;

(f) The authority shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The authority shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the authority may enter into prepaid capitation contracts that do not include inpatient care;

(h) The authority shall define those circumstances under which a managed health care system is responsible for out-of-plan services and assure that recipients shall not be charged for such services;

(i) Nothing in this section prevents the authority from entering into similar agreements for other groups of people eligible to receive services under this chapter; and

(j) The authority must consult with the federal center for medicare and medicaid innovation and seek funding opportunities to support health homes.

(3) The authority shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate as managed health care systems are seriously considered as contractors. The authority shall coordinate its managed care activities with activities under chapter 70.47 RCW.

(4) The authority shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

(5) The legislature finds that competition in the managed health care marketplace is enhanced, in the long term, by the existence of a large number of managed health care system options for medicaid clients. In a managed care delivery system, whose goal is to focus on prevention, primary care, and improved enrollee health status, continuity in care relationships is of substantial importance, and disruption to clients and health care providers should be minimized. To help ensure these goals are met, the following principles shall guide the authority in its healthy options managed health care purchasing efforts:

(a) All managed health care systems should have an opportunity to contract with the authority to the extent that minimum contracting requirements defined by the authority are met, at payment rates that enable the authority to operate as far below appropriated spending levels as possible, consistent with the principles established in this section.

(b) Managed health care systems should compete for the award of contracts and assignment of medicaid beneficiaries who do not voluntarily select a contracting system, based upon:

(i) Demonstrated commitment to or experience in serving low-income populations;

(ii) Quality of services provided to enrollees;

(iii) Accessibility, including appropriate utilization, of services offered to enrollees;

(iv) Demonstrated capability to perform contracted services, including ability to supply an adequate provider network;

(v) Payment rates; and

(vi) The ability to meet other specifically defined contract requirements established by the authority, including consideration of past and current performance and participation in other state or federal health programs as a contractor.

(c) Consideration should be given to using multiple year contracting periods.

(d) Quality, accessibility, and demonstrated commitment to serving low-income populations shall be given significant weight in the contracting, evaluation, and assignment process.

(e) All contractors that are regulated health carriers must meet state minimum net worth requirements as defined in applicable state laws. The authority shall adopt rules establishing the minimum net worth requirements for contractors that are not regulated health carriers. This subsection does not limit the authority of the Washington state health care authority to take action under a contract upon finding that a contractor's financial status seriously jeopardizes the contractor's ability to meet its contract obligations.

(f) Procedures for resolution of disputes between the authority and contract bidders or the authority and contracting carriers related to the award of, or failure to award, a managed care contract must be clearly set out in the procurement document.

(6) The authority may apply the principles set forth in subsection (5) of this section to its managed health care pur-

chasing efforts on behalf of clients receiving supplemental security income benefits to the extent appropriate.

(7) Any contract with a managed health care system to provide services to medical assistance enrollees shall require that managed health care systems offer contracts to mental health providers and substance use disorder treatment providers to provide access to primary care services integrated into behavioral health clinical settings, for individuals with behavioral health and medical comorbidities.

(8) Managed health care system contracts effective on or after April 1, 2016, shall serve geographic areas that correspond to the regional service areas established in RCW 74.09.870.

(9) A managed health care system shall pay a nonparticipating provider that provides a service covered under this chapter or other applicable law 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 if the managed health care system has made good faith efforts to contract with the nonparticipating provider.

(10) For services covered under this chapter or other applicable law to medical assistance or medical care services enrollees, nonparticipating providers must accept as payment in full the amount paid by the managed health care system under subsection (9) of this section in addition to any deductible, coinsurance, or copayment that is due from the enrollee for the service provided. An enrollee is not liable to any nonparticipating provider for covered services, except for amounts due for any deductible, coinsurance, or copayment under the terms and conditions set forth in the managed health care system contract to provide services under this section.

(11) 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.

(12) Payments under RCW 74.60.130 are exempt from this section.

(13) Subsections (9) through (11) of this section expire July 1, 2021. [2019 c 325 § 4004; 2018 c 201 § 7017; 2015 c 256 § 1; 2014 c 225 § 55; 2013 2nd sp.s. c 17 § 13; 2013 c 261 § 2. Prior: 2011 1st sp.s. c 15 § 29; 2011 1st sp.s. c 9 § 2; 2011 c 316 § 4; prior: 1997 c 59 § 15; 1997 c 34 § 1; 1989 c 260 § 2; 1987 1st ex.s. c 5 § 21; 1986 c 303 § 2.]

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—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

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—2011 1st sp.s. c 9: See note following RCW 70.47.020.

Legislative findings—Intent—1986 c 303: "(1) The legislature finds that:

(a) Good health care for indigent persons is of importance to the state;

(b) To ensure the availability of a good level of health care, efforts must be made to encourage cost consciousness on the part of providers and consumers, while maintaining medical assistance recipients within the mainstream of health care delivery;

(c) Managed health care systems have been found to be effective in controlling costs while providing good health care services;

(d) By enrolling medical assistance recipients within managed health care systems, the state's goal is to ensure that medical assistance recipients receive at least the same quality of care they currently receive.

(2) It is the intent of the legislature to develop and implement new strategies that promote the use of managed health care systems for medical assistance recipients by establishing prepaid capitated programs for both inpatient and outpatient services." [1986 c 303 § 1.]

Additional notes found at www.leg.wa.gov

74.09.5222 Medical assistance—Section 1115 demonstration waiver request. (1) The authority shall submit a section 1115 demonstration waiver request to the federal department of health and human services to expand and revise the medical assistance program as codified in Title XIX of the federal social security act. The waiver request should be designed to ensure the broadest federal financial participation under Title XIX and XXI of the federal social security act. To the extent permitted under federal law, the waiver request should include the following components:

(a) Establishment of a single eligibility standard for low-income persons, including expansion of categorical eligibility to include childless adults. The authority shall request that the single eligibility standard be phased in such that incremental steps are taken to cover additional low-income parents and individuals over time, with the goal of offering coverage to persons with household income at or below two hundred percent of the federal poverty level;

(b) Establishment of a single seamless application and eligibility determination system for all state low-income medical programs included in the waiver. Applications may be electronic and may include an electronic signature for verification and authentication. Eligibility determinations should maximize federal financing where possible;

(c) The delivery of all low-income coverage programs as a single program, with a common core benefit package that may be similar to the basic health benefit package or an alternative benefit package approved by the secretary of the federal department of health and human services, including the option of supplemental coverage for select categorical groups, such as children, and individuals who are aged, blind, and disabled;

(d) A program design to include creative and innovative approaches such as: Coverage for preventive services with incentives to use appropriate preventive care; enhanced medical home reimbursement and bundled payment methodologies; cost-sharing options; use of care management and care coordination programs to improve coordination of medical and behavioral health services; application of an innovative predictive risk model to better target care management ser-

vices; and mandatory enrollment in managed care, as may be necessary;

(e) The ability to impose enrollment limits or benefit design changes for eligibility groups that were not eligible under the Title XIX state plan in effect on the date of submission of the waiver application;

(f) A premium assistance program whereby employers can participate in coverage options for employees and dependents of employees otherwise eligible under the waiver. The waiver should make every effort to maximize enrollment in employer-sponsored health insurance when it is cost-effective for the state to do so, and the purchase is consistent with the requirements of Titles XIX and XXI of the federal social security act. To the extent allowable under federal law, the authority shall require enrollment in available employer-sponsored coverage as a condition of eligibility for coverage under the waiver; and

(g) The ability to share savings that might accrue to the federal medicare program, Title XVIII of the federal social security act, from improved care management for persons who are eligible for both medicare and medicaid. Through the waiver application process, the authority shall determine whether the state could serve, directly or by contract, as a medicare special needs plan for persons eligible for both medicare and medicaid.

(2) The authority shall hold ongoing stakeholder discussions as it is developing the waiver request, and provide opportunities for public review and comment as the request is being developed.

(3) The authority shall identify statutory changes that may be necessary to ensure successful and timely implementation of the waiver request as submitted to the federal department of health and human services as the apple health program for adults.

(4) The legislature must authorize implementation of any waiver approved by the federal department of health and human services under this section. [2011 1st sp.s. c 15 § 30; 2009 c 545 § 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.

Findings—2009 c 545: See note following RCW 43.06.155.

74.09.5223 Findings—Chronic care management. The legislature finds that chronic care management, including comprehensive medication management services, provided by licensed pharmacists and qualified providers is a critical component of a collaborative, multidisciplinary, inter-professional approach to the treatment of chronic diseases for targeted individuals, to improve the quality of care and reduce overall cost in the treatment of such diseases. [2013 c 261 § 1.]

74.09.5225 Medical assistance—Payments for services provided by rural hospitals—Participation in Washington rural health access preservation pilot. (1) Payments for recipients eligible for medical assistance programs under this chapter for services provided by hospitals, regardless of the beneficiary's managed care enrollment status, shall be made based on allowable costs incurred during the year, when services are provided by a rural hospital certified by the centers for medicare and medicaid services as a critical access hospital, unless the critical access hospital is participating in the Washington rural health access preservation pilot described in subsection (2)(b) of this section. Any additional payments made by the authority for the healthy options program shall be no more than the additional amounts per service paid under this section for other medical assistance programs.

(2)(a) Beginning on July 24, 2005, except as provided in (b) of this subsection, a moratorium shall be placed on additional hospital participation in critical access hospital payments under this section. However, rural hospitals that applied for certification to the centers for medicare and medicaid services prior to January 1, 2005, but have not yet completed the process or have not yet been approved for certification, remain eligible for medical assistance payments under this section.

(b)(i) The purpose of the Washington rural health access preservation pilot is to develop an alternative service and payment system to the critical access hospital authorized under section 1820 of the social security act to sustain essential services in rural communities.

(ii) For the purposes of state law, any rural hospital approved by the department of health for participation in critical access hospital payments under this section that participates in the Washington rural health access preservation pilot identified by the state office of rural health and ceases to participate in critical access hospital payments may renew participation in critical access hospital associated payment methodologies under this section at any time.

(iii) The Washington rural health access preservation pilot is subject to the following requirements:

(A) In the pilot formation or development, the department of health, health care authority, and Washington state hospital association will identify goals for the pilot project before any hospital joins the pilot project;

(B) Participation in the pilot is optional and no hospital may be required to join the pilot;

(C) Before a hospital enters the pilot program, the health care authority must provide information to the hospital regarding how the hospital could end its participation in the pilot if the pilot is not working in its community;

(D) Payments for services delivered by public health care service districts participating in the Washington rural health access preservation pilot to recipients eligible for medical assistance programs under this chapter must be based on an alternative, value-based payment methodology established by the authority. Subject to the availability of amounts appropriated for this specific purpose, the payment methodology must provide sufficient funding to sustain essential services in the areas served, including but not limited to emergency and primary care services. The methodology must adjust payment amounts based on measures of quality and value, rather than volume. As part of the pilot, the health care authority shall encourage additional payers to use the adopted payment methodology for services delivered by the pilot participants to individuals insured by those payers;

(E) The department of health, health care authority, and Washington state hospital association will report interim progress to the legislature no later than December 1, 2018, and will report on the results of the pilot no later than six

months following the conclusion of the pilot. The reports will describe any policy changes identified during the course of the pilot that would support small critical access hospitals; and

(F) Funds appropriated for the Washington rural health access preservation pilot will be used to help participating hospitals transition to a new payment methodology and will not extend beyond the anticipated three-year pilot period.

(3)(a) Beginning January 1, 2015, payments for recipients eligible for medical assistance programs under this chapter for services provided by a hospital, regardless of the beneficiary's managed care enrollment status, shall be increased to one hundred twenty-five percent of the hospital's fee-for-service rates, when services are provided by a rural hospital that:

(i) Was certified by the centers for medicare and medicaid services as a sole community hospital as of January 1, 2013;

(ii) Had a level III adult trauma service designation from the department of health as of January 1, 2014;

(iii) Had less than one hundred fifty acute care licensed beds in fiscal year 2011; and

(iv) Is owned and operated by the state or a political subdivision.

(b) The enhanced payment rates under this subsection shall be considered the hospital's medicaid payment rate for purposes of any other state or private programs that pay hospitals according to medicaid payment rates.

(c) Hospitals participating in the certified public expenditures program may not receive the increased reimbursement rates provided in this subsection (3) for inpatient services. [2017 c 198 § 1; 2016 sp.s. c 31 § 2; 2014 c 57 § 2; 2011 1st sp.s. c 15 § 31; 2005 c 383 § 1; 2001 2nd sp.s. c 2 § 2.]

Finding—Intent—2016 sp.s. c 31: "The legislature finds that small critical access hospitals provide essential services to their communities. The legislature recognizes the need to offer small critical access hospitals the opportunity to pilot different delivery and payment models than may be currently allowed under the critical access hospital program. The legislature also intends to allow these participating hospitals to return to the critical access hospital program if they so choose." [2016 sp.s. c 31 § 1.]

Findings—2014 c 57: "The legislature finds that promoting a financially viable health care system in all parts of the state is a critical interest. The federal centers for medicare and medicaid services has recognized the crucial role hospitals play in providing care in rural areas by creating the sole community hospital program, which allows certain small rural hospitals to receive enhanced payments for medicare services. The legislature further finds that creating a similar reimbursement system for the state's medicaid program for sole community hospitals will promote the long-term financial viability of the rural health care system in those communities." [2014 c 57 § 1.]

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—2001 2nd sp.s. c 2: "The legislature finds that promoting a financially viable health care system in all parts of the state is a paramount interest. The health care financing administration has recognized the crucial role that hospitals play in providing care in rural areas by creating the critical access hospital program to allow small, rural hospitals that qualify to receive reasonable cost-based reimbursement for medicare services. The legislature further finds that creating a similar reimbursement system for the state's medical assistance programs in small, rural hospitals that qualify will help assure the long-term financial viability of the rural health system in those communities." [2001 2nd sp.s. c 2 § 1.]

74.09.5229 Primary care health homes—Chronic care management—Findings—Intent. The legislature finds that:

(1) Health care costs are growing rapidly, exceeding the consumer price index year after year. Consequently, state health programs are capturing a growing share of the state budget, even as state revenues have declined. Sustaining these critical health programs will require actions to effectively contain health care cost increases in the future; and

(2) The primary care health home model has been demonstrated to successfully constrain costs, while improving quality of care. Chronic care management, occurring within a primary care health home, has been shown to be especially effective at reducing costs and improving quality. However, broad adoption of these models has been impeded by a fee-for-service system that reimburses volume of services and does not adequately support important primary care health home services, such as case management and patient outreach. Furthermore, successful implementation will require a broad adoption effort by private and public payers, in coordination with providers.

Therefore the legislature intends to promote the adoption of primary care health homes for children and adults and, within them, advance the practice of chronic care management to improve health outcomes and reduce unnecessary costs. To facilitate the best coordination and patient care, primary care health homes are encouraged to collaborate with other providers currently outside the medical insurance model. Successful chronic care management for persons receiving long-term care services in addition to medical care will require close coordination between primary care providers, long-term care workers, and other long-term care service providers, including area agencies on aging. Primary care providers also should consider oral health coordination through collaboration with dental providers and, when possible, delivery of oral health prevention services. The legislature also intends that the methods and approach of the primary care health home become part of basic primary care medical education. [2011 c 316 § 1.]

74.09.523 PACE program—Definitions—Requirements. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "PACE" means the program of all-inclusive care for the elderly, a managed care medicare/medicaid program authorized under sections 1894, 1905(a), and 1934 of the social security act and administered by the department.

(b) "PACE program agreement" means an agreement between a PACE organization, the health care financing administration, and the department.

(2) A PACE program may operate in the state only in accordance with a PACE program agreement with the department.

(3) A PACE program shall at the time of entering into the initial PACE program agreement, and at each renewal thereof, demonstrate cash reserves to cover expenses in the event of insolvency.

(a) The cash reserves at a minimum shall equal the sum of:

(i) One month's total capitation revenue; and

(ii) One month's average payment to subcontractors.

(b) The program may demonstrate cash reserves to cover expenses of insolvency with one or more of the following: Reasonable and sufficient net worth, insolvency insurance, or parental guarantees.

(4) A PACE program must provide full disclosure regarding the terms of enrollment and the option to disenroll at any time to all persons who seek to participate or who are participants in the program.

(5) The department must establish rules to authorize long-term care clients enrolled in a PACE program to elect to continue their enrollment in a PACE program regardless of improved status related to functional criteria for nursing facility level of care, consistent with 42 C.F.R. Sec. 460.160(b) (2013).

(6) The department must develop and implement a coordinated plan to provide education about PACE program site operations under this section. The plan must include:

(a) A strategy to assure that case managers and other staff with responsibilities related to eligibility determinations discuss the option and potential benefits of participating in a PACE program with all eligible long-term care clients;

(b) Requirements that all clients eligible for placement in the community options program entry system waiver program that are age fifty-five or over and reside in a PACE service area be referred to the PACE provider for evaluation. The department's plan must assure that referrals are conducted in a manner that is consistent with federal requirements of Title XIX of the federal social security act; and

(c) Requirements for additional and ongoing training for case managers and other staff with responsibilities related to eligibility determinations in those counties in which a PACE program is operating. The training must include instruction in recognizing the benefits of continued enrollment in a PACE program for those clients who have experienced improved status related to functional criteria for nursing facility level of care.

(7) The department must identify a private entity that operates PACE program sites in Washington to provide the training required under subsection (6) of this section at no cost to the state. [2013 c 258 § 1; 2001 c 191 § 2.]

Finding—2001 c 191: "The legislature finds that PACE programs provide essential care to the frail elderly in the state of Washington. PACE serves to enhance the quality of life and autonomy for frail, older adults, maximize the dignity of and respect for older adults, enable frail and older adults to live in their homes and their community as long as medically possible, and preserve and support the older adult's family unit." [2001 c 191 § 1.]

Additional notes found at www.leg.wa.gov

74.09.530 Medical assistance—Powers and duties of authority. (1)(a) The authority is designated as the single state agency for purposes of Title XIX of the federal social security act.

(b) The amount and nature of medical assistance and the determination of eligibility of recipients for medical assistance shall be the responsibility of the authority.

(c) The authority shall establish reasonable standards of assistance and resource and income exemptions which shall be consistent with the provisions of the social security act and federal regulations for determining eligibility of individuals for medical assistance and the extent of such assistance to the extent that funds are available from the state and federal government. The authority shall not consider resources in determining continuing eligibility for recipients eligible under section 1931 of the social security act.

(d) The authority is authorized to collaborate with other state or local agencies and nonprofit organizations in carrying out its duties under this chapter or other applicable law and, to the extent appropriate, may enter into agreements with such other entities.

(2) Individuals eligible for medical assistance under RCW 74.09.510(3) shall be transitioned into coverage under that subsection immediately upon their termination from coverage under RCW 74.09.510(2)(a). The authority shall use income eligibility standards and eligibility determinations applicable to children placed in foster care. The authority shall provide information regarding basic health plan enrollment and shall offer assistance with the application and enrollment process to individuals covered under RCW 74.09.510(3) who are approaching their twenty-first birthday. [2018 c 201 § 7018; 2011 1st sp.s. c 15 § 32; 2007 c 315 § 2; 2000 c 218 § 2; 1979 c 141 § 345; 1967 ex.s. c 30 § 6.]

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

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

74.09.540 Medical assistance—Working individuals with disabilities—Intent. ***(Effective until January 1, 2020.)*** (1) It is the intent of the legislature to remove barriers to employment for individuals with disabilities by providing medical assistance to working individuals with disabilities through a buy-in program in accordance with section 1902(a)(10)(A)(ii) of the social security act and eligibility and cost-sharing requirements established by the authority.

(2) The authority shall establish income, resource, and cost-sharing requirements for the buy-in program in accordance with federal law and any conditions or limitations specified in the omnibus appropriations act. The authority shall establish and modify eligibility and cost-sharing requirements in order to administer the program within available funds. The authority shall make every effort to coordinate benefits with employer-sponsored coverage available to the working individuals with disabilities receiving benefits under this chapter or other applicable law. [2018 c 201 § 7019; 2011 1st sp.s. c 15 § 33; 2001 2nd sp.s. c 15 § 2.]

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

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—2001 2nd sp.s. c 15: "The legislature finds that individuals with disabilities face many barriers and disincentives to employment. Individuals with disabilities are often unable to obtain health insurance that provides the services and supports necessary to allow them to live independently and enter or rejoin the workforce. The legislature finds that there is a compelling public interest in eliminating barriers to work by continuing needed health care coverage for individuals with disabilities who enter and maintain employment.

The legislature intends to strengthen the state's policy of supporting individuals with disabilities in leading fully productive lives by supporting the implementation of the federal ticket to work and work incentives improvement act of 1999, Public Law 106-170. This shall include improving incentives to work by continuing coverage for health care and support services, by seeking federal funding for innovative programs, and by exploring

options which provide individuals with disabilities a choice in receiving services needed to obtain and maintain employment." [2001 2nd sp.s. c 15 § 1.]

74.09.540 Medical assistance—Working individuals with disabilities—Intent. ***(Effective January 1, 2020.)*** (1) It is the intent of the legislature to remove barriers to employment for individuals with disabilities by providing medical assistance to working individuals with disabilities through a buy-in program in accordance with section 1902(a)(10)(A)(ii) of the social security act and eligibility and cost-sharing requirements established by the authority.

(2) The authority shall establish cost-sharing requirements for the buy-in program in accordance with federal law and any conditions or limitations specified in the omnibus appropriations act. The authority shall establish and modify eligibility and cost-sharing requirements in order to administer the program within available funds. The authority may consider a person's income when establishing cost-sharing requirements. The authority may not establish eligibility restrictions for the buy-in program based upon a person's income or maximum age. The authority shall make every effort to coordinate benefits with employer-sponsored coverage available to the working individuals with disabilities receiving benefits under this chapter or other applicable law.

(3) The authority shall seek federal approval to exclude resources accumulated in a separate account that results from earnings during an individual's enrollment in the buy-in program when determining the individual's subsequent eligibility for another medical assistance program. [2019 c 70 § 1; 2018 c 201 § 7019; 2011 1st sp.s. c 15 § 33; 2001 2nd sp.s. c 15 § 2.]

Effective date—2019 c 70: "This act takes effect January 1, 2020." [2019 c 70 § 2.]

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

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—2001 2nd sp.s. c 15: "The legislature finds that individuals with disabilities face many barriers and disincentives to employment. Individuals with disabilities are often unable to obtain health insurance that provides the services and supports necessary to allow them to live independently and enter or rejoin the workforce. The legislature finds that there is a compelling public interest in eliminating barriers to work by continuing needed health care coverage for individuals with disabilities who enter and maintain employment.

The legislature intends to strengthen the state's policy of supporting individuals with disabilities in leading fully productive lives by supporting the implementation of the federal ticket to work and work incentives improvement act of 1999, Public Law 106-170. This shall include improving incentives to work by continuing coverage for health care and support services, by seeking federal funding for innovative programs, and by exploring options which provide individuals with disabilities a choice in receiving services needed to obtain and maintain employment." [2001 2nd sp.s. c 15 § 1.]

74.09.545 Medical assistance or limited casualty program—Eligibility—Agreements between spouses to transfer future income—Community income. (1) An agreement between spouses transferring or assigning rights to future income from one spouse to the other shall be invalid for purposes of determining eligibility for medical assistance or the limited casualty program for the medically needy, but this subsection does not affect agreements between spouses transferring or assigning resources, and income produced by transferred or assigned resources shall continue to be recognized as the separate income of the transferee; and

(2) In determining eligibility for medical assistance or the limited casualty program for the medically needy for a married person in need of institutional care, or care under home and community based waivers as defined in Title XIX of the Social Security Act, if the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess shall be considered unavailable to the applicant. [1986 c 220 § 1.]

74.09.555 Medical assistance—Reinstatement upon release from confinement—Expedited eligibility determinations. ***(Effective until January 1, 2020.)*** (1) The authority shall adopt rules and policies providing that when persons with a mental disorder, who were enrolled in medical assistance immediately prior to confinement, are released from confinement, their medical assistance coverage will be fully reinstated on the day of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law.

(2) The authority, in collaboration with the Washington association of sheriffs and police chiefs, the department of corrections, and the behavioral health organizations, shall establish procedures for coordination between the authority and department field offices, institutions for mental disease, and correctional institutions, as defined in RCW 9.94.049, that result in prompt reinstatement of eligibility and speedy eligibility determinations for persons who are likely to be eligible for medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services applications on behalf of confined persons in anticipation of their release from confinement;

(b) Expeditious review of applications filed by or on behalf of confined persons and, to the extent practicable, completion of the review before the person is released;

(c) Mechanisms for providing medical assistance services identity cards to persons eligible for medical assistance services immediately upon their release from confinement; and

(d) Coordination with the federal social security administration, through interagency agreements or otherwise, to expedite processing of applications for federal supplemental security income or social security disability benefits, including federal acceptance of applications on behalf of confined persons.

(3) Where medical or psychiatric examinations during a person's confinement indicate that the person is disabled, the correctional institution or institution for mental diseases shall provide the authority with that information for purposes of making medical assistance eligibility and enrollment determinations prior to the person's release from confinement. The authority shall, to the maximum extent permitted by federal law, use the examination in making its determination whether the person is disabled and eligible for medical assistance.

(4) For purposes of this section, "confined" or "confinement" means incarcerated in a correctional institution, as defined in RCW 9.94.049, or admitted to an institute for men-

tal disease, as defined in 42 C.F.R. part 435, Sec. 1009 on July 24, 2005.

(5) For purposes of this section, "likely to be eligible" means that a person:

(a) Was enrolled in medicaid or supplemental security income or the medical care services program immediately before he or she was confined and his or her enrollment was terminated during his or her confinement; or

(b) Was enrolled in medicaid or supplemental security income or the medical care services program at any time during the five years before his or her confinement, and medical or psychiatric examinations during the person's confinement indicate that the person continues to be disabled and the disability is likely to last at least twelve months following release.

(6) The economic services administration within the department shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined person who is likely to be eligible for medicaid. [2014 c 225 § 102. Prior: 2011 1st sp.s. c 36 § 32; 2011 1st sp.s. c 15 § 34; 2010 1st sp.s. c 8 § 30; 2005 c 503 § 12.]

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

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

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—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

74.09.555 Medical assistance—Reinstatement upon release from confinement—Expedited eligibility determinations. ***(Effective January 1, 2020.)*** (1) The authority shall adopt rules and policies providing that when persons with a mental disorder, who were enrolled in medical assistance immediately prior to confinement, are released from confinement, their medical assistance coverage will be fully reinstated on the day of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law.

(2) The authority, in collaboration with the Washington association of sheriffs and police chiefs, the department of corrections, managed care organizations, and behavioral health administrative services organizations, shall establish procedures for coordination between the authority and department field offices, institutions for mental disease, and correctional institutions, as defined in RCW 9.94.049, that result in prompt reinstatement of eligibility and speedy eligibility determinations for persons who are likely to be eligible for medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services applications on behalf of confined persons in anticipation of their release from confinement;

(b) Expeditious review of applications filed by or on behalf of confined persons and, to the extent practicable, completion of the review before the person is released;

(c) Mechanisms for providing medical assistance services identity cards to persons eligible for medical assistance services immediately upon their release from confinement; and

(d) Coordination with the federal social security administration, through interagency agreements or otherwise, to expedite processing of applications for federal supplemental security income or social security disability benefits, including federal acceptance of applications on behalf of confined persons.

(3) Where medical or psychiatric examinations during a person's confinement indicate that the person is disabled, the correctional institution or institution for mental diseases shall provide the authority with that information for purposes of making medical assistance eligibility and enrollment determinations prior to the person's release from confinement. The authority shall, to the maximum extent permitted by federal law, use the examination in making its determination whether the person is disabled and eligible for medical assistance.

(4) For purposes of this section, "confined" or "confinement" means incarcerated in a correctional institution, as defined in RCW 9.94.049, or admitted to an institute for mental disease, as defined in 42 C.F.R. part 435, Sec. 1009 on July 24, 2005.

(5) For purposes of this section, "likely to be eligible" means that a person:

(a) Was enrolled in medicaid or supplemental security income or the medical care services program immediately before he or she was confined and his or her enrollment was terminated during his or her confinement; or

(b) Was enrolled in medicaid or supplemental security income or the medical care services program at any time during the five years before his or her confinement, and medical or psychiatric examinations during the person's confinement indicate that the person continues to be disabled and the disability is likely to last at least twelve months following release.

(6) The economic services administration within the department shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined person who is likely to be eligible for medicaid. [2019 c 325 § 4005; 2014 c 225 § 102. Prior: 2011 1st sp.s. c 36 § 32; 2011 1st sp.s. c 15 § 34; 2010 1st sp.s. c 8 § 30; 2005 c 503 § 12.]

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

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

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

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—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

74.09.557 Medical assistance—Complex rehabilitation technology products. (1) The authority shall establish a separate recognition for individually configured, complex rehabilitation technology products and services for complex

needs patients with the medical assistance program. This separate recognition shall:

(a) Establish a budget and services category separate from other categories, such as durable medical equipment and supplies;

(b) Take into consideration the customized nature of complex rehabilitation technology and the broad range of services necessary to meet the unique medical and functional needs of people with complex medical needs; and

(c) Establish standards for the purchase of complex rehabilitation technology exclusively from qualified complex rehabilitation technology suppliers.

(2) The authority shall require complex needs patients receiving complex rehabilitation technology to be evaluated by:

(a) A licensed health care provider who performs specialty evaluations within his or her scope of practice, including a physical therapist licensed under chapter 18.74 RCW and an occupational therapist licensed under chapter 18.59 RCW, and has no financial relationship with the qualified complex rehabilitation technology supplier; and

(b) A qualified complex rehabilitation technology professional, as identified in subsection (3)(d)(iii) of this section.

(3) As used in this section:

(a) "Complex needs patient" means an individual with a diagnosis or medical condition that results in significant physical or functional needs and capacities. "Complex needs patient" does not negate the requirement that an individual meet medical necessity requirements under authority rules to qualify for receiving a complex rehabilitation product.

(b) "Complex rehabilitation technology" means wheelchairs and seating systems classified as durable medical equipment within the medicare program as of January 1, 2013, that:

(i) Are individually configured for individuals to meet their specific and unique medical, physical, and functional needs and capacities for basic activities of daily living and instrumental activities of daily living identified as medically necessary to prevent hospitalization or institutionalization of a complex needs patient;

(ii) Are primarily used to serve a medical purpose and generally not useful to a person in the absence of an illness or injury; and

(iii) Require certain services to allow for appropriate design, configuration, and use of such item, including patient evaluation and equipment fitting and configuration.

(c) "Individually configured" means a device has a combination of features, adjustments, or modifications specific to a complex needs patient that a qualified complex rehabilitation technology supplier provides by measuring, fitting, programming, adjusting, or adapting the device as appropriate so that the device is consistent with an assessment or evaluation of the complex needs patient by a health care professional and consistent with the complex needs patient's medical condition, physical and functional needs and capacities, body size, period of need, and intended use.

(d) "Qualified complex rehabilitation technology supplier" means a company or entity that:

(i) Is accredited by a recognized accrediting organization as a supplier of complex rehabilitation technology;

(ii) Meets the supplier and quality standards established for durable medical equipment suppliers under the medicare program;

(iii) For each site that it operates, employs at least one complex rehabilitation technology professional, who has been certified by the rehabilitation engineering and assistive technology society of North America as an assistive technology professional, to analyze the needs and capacities of complex needs patients, assist in selecting appropriate covered complex rehabilitation technology items for such needs and capacities, and provide training in the use of the selected covered complex rehabilitation technology items;

(iv) Has the complex rehabilitation technology professional physically present for the evaluation and determination of the appropriate individually configured complex rehabilitation technologies for the complex needs patient;

(v) Provides service and repairs by qualified technicians for all complex rehabilitation technology products it sells; and

(vi) Provides written information to the complex needs patient at the time of delivery about how the individual may receive service and repair. [2013 c 178 § 2.]

Intent—2013 c 178: "The legislature intends to:

(1) Protect access for complex needs patients to important technology and supporting services;

(2) Establish and improve safeguards relating to the delivery and provision of medically necessary complex rehabilitation technology; and

(3) Provide supports for complex needs patients to stay in the home or community setting, prevent institutionalization, and prevent hospitalizations and other costly secondary complications." [2013 c 178 § 1.]

Effective date—2013 c 178: "This act takes effect January 1, 2014." [2013 c 178 § 3.]

74.09.565 Medical assistance for institutionalized persons—Treatment of income between spouses. (1) An agreement between spouses transferring or assigning rights to future income from one spouse to the other shall be invalid for purposes of determining eligibility for medical assistance or the limited casualty program for the medically needy, but this subsection does not affect agreements between spouses transferring or assigning resources, and income produced by transferred or assigned resources shall continue to be recognized as the separate income of the transferee.

(2) In determining eligibility for medical assistance or the limited casualty program for the medically needy for a married person in need of institutional care, or care under home and community-based waivers as defined in Title XIX of the social security act, if the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess shall be considered unavailable to the applicant.

(3) The department or authority, as appropriate, shall adopt rules consistent with the provisions of section 1924 of the social security act entitled "Treatment of Income and Resources for Certain Institutionalized Spouses," in determining the allocation of income between an institutionalized and community spouse.

(4) The department or authority, as appropriate, shall establish the monthly maintenance needs allowance for the community spouse up to the maximum amount allowed by state appropriation or within available funds and permitted in

section 1924 of the social security act. The total monthly needs allowance shall not exceed one thousand five hundred dollars, subject to adjustment provided in section 1924 of the social security act. [2011 1st sp.s. c 15 § 35; 1989 c 87 § 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.

Additional notes found at www.leg.wa.gov

74.09.575 Medical assistance for institutionalized persons—Treatment of resources. (1) The department or authority, as appropriate, shall promulgate rules consistent with the treatment of resources provisions of section 1924 of the social security act in determining the allocation of resources between the institutionalized and community spouse.

(2) In the interest of supporting the community spouse the department or authority, as appropriate, shall allow the maximum resource allowance amount permissible under the social security act for the community spouse for persons institutionalized before August 1, 2003.

(3) For persons institutionalized on or after August 1, 2003, the department or authority, as appropriate, in the interest of supporting the community spouse, shall allow up to a maximum of forty thousand dollars in resources for the community spouse. For the fiscal biennium beginning July 1, 2005, and each fiscal biennium thereafter, the maximum resource allowance amount for the community spouse shall be adjusted for economic trends and conditions by increasing the amount allowable by the consumer price index as published by the federal bureau of labor statistics. However, in no case shall the amount allowable exceed the maximum resource allowance permissible under the social security act. [2011 1st sp.s. c 15 § 36; 2003 1st sp.s. c 28 § 1; 1989 c 87 § 5.]

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

74.09.585 Medical assistance for institutionalized persons—Period of ineligibility for transfer of resources. (1) The department or authority, as appropriate, shall establish standards consistent with section 1917 of the social security act in determining the period of ineligibility for medical assistance due to the transfer of resources.

(2) There shall be no penalty imposed for the transfer of assets that are excluded in a determination of the individual's eligibility for medicaid to the extent such assets are protected by the long-term care insurance policy or contract pursuant to chapter 48.85 RCW.

(3) The department or authority, as appropriate, may waive a period of ineligibility if the department or authority determines that denial of eligibility would work an undue hardship. [2011 1st sp.s. c 15 § 37; 1995 1st sp.s. c 18 § 81; 1989 c 87 § 7.]

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

74.09.595 Medical assistance for institutionalized persons—Due process procedures. The department or authority, as appropriate, shall in compliance with section 1924 of the social security act adopt procedures which provide due process for institutionalized or community spouses who request a fair hearing as to the valuation of resources, the amount of the community spouse resource allowance, or the monthly maintenance needs allowance. [2011 1st sp.s. c 15 § 38; 1989 c 87 § 8.]

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

74.09.597 Medical assistance—Durable medical equipment and medical supplies—Providers. The following must be medicare providers in order to be paid under the medicaid program: Providers of durable medical equipment and related supplies and providers of medical supplies and related services. [2012 c 241 § 105.]

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.09.600 Post audit examinations by state auditor. Nothing in this chapter shall preclude the state auditor from conducting post audit examinations of public funds pursuant to RCW 43.09.330 or other applicable law. [1977 ex.s. c 260 § 6.]

Additional notes found at www.leg.wa.gov

74.09.605 Incorporation of outcomes/criteria into contracts with managed care organizations. The authority shall incorporate the expected outcomes and criteria to measure the performance of service coordination organizations as provided in chapter 70.320 RCW into contracts with managed care organizations that provide services to clients under this chapter. [2013 c 320 § 7.]

74.09.611 Hospital quality incentive payments—Noncritical access hospitals. (1) If sufficient funds are made available as provided in subsection (2) of this section the authority, in collaboration with the Washington state hospital association, shall design a system of hospital quality incentive payments for noncritical access hospitals. The system must be based upon the following principles:

(a) Evidence-based treatment and processes must be used to improve health care outcomes for hospital patients;

(b) Effective purchasing strategies to improve the quality of health care services should involve the use of common quality improvement measures by public and private health care purchasers, while recognizing that some measures may not be appropriate for application to specialty pediatric, psychiatric, or rehabilitation hospitals;

(c) Quality measures chosen for the system should be consistent with the standards that have been developed by national quality improvement organizations, such as the national quality forum, the federal centers for medicare and medicaid services, or the federal agency for healthcare research and quality. New reporting burdens to hospitals should be minimized by giving priority to measures hospitals are currently required to report to governmental agencies,

such as the hospital compare measures collected by the federal centers for medicare and medicaid services;

(d) Benchmarks for each quality improvement measure should be set at levels that are feasible for hospitals to achieve, yet represent real improvements in quality and performance for a majority of hospitals in Washington state; and

(e) Hospital performance and incentive payments should be designed in a manner such that all noncritical access hospitals are able to receive the incentive payments if performance is at or above the benchmark score set in the system established under this section.

(2) If hospital safety net assessment funds under RCW 74.60.020 are made available, such funds must be used to support an additional one percent increase in inpatient hospital rates for noncritical access hospitals that:

(a) Meet the quality incentive benchmarks established under this section; and

(b) Participate in Washington state hospital association collaboratives related to the benchmarks in order to improve care and promote sharing of best practices with other hospitals.

(3) Funds directed from any other lawful source may also be used to support the purposes of this section. [2013 2nd sp.s. c 17 § 18.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.09.640 Opioid use disorder—Nonpharmacologic treatments. (1) In order to support prevention of potential opioid use disorders, the authority must develop and recommend for coverage nonpharmacologic treatments for acute, subacute, and chronic noncancer pain and must report to the governor and the appropriate committees of the legislature, including any requests for funding necessary to implement the recommendations under this section. The recommendations must contain the following elements:

(a) A list of which nonpharmacologic treatments will be covered;

(b) Recommendations as to the duration, amount, and type of treatment eligible for coverage;

(c) Guidance on the type of providers eligible to provide these treatments; and

(d) Recommendations regarding the need to add any provider types to the list of currently eligible medicaid provider types.

(2) The authority must ensure only treatments that are evidence-based for the treatment of the specific acute, subacute, and chronic pain conditions will be eligible for coverage recommendations. [2019 c 314 § 35.]

Declaration—2019 c 314: See note following RCW 18.22.810.

74.09.645 Opioid use disorder—Coverage without prior authorization. Upon initiation or renewal of a contract with the authority to administer a medicaid managed care plan, a managed health care system shall provide coverage without prior authorization of at least one federal food and drug administration approved product for the treatment of opioid use disorder in the drug classes opioid agonists, opioid antagonists, and opioid partial agonists. [2019 c 314 § 38.]

Declaration—2019 c 314: See note following RCW 18.22.810.

74.09.650 Prescription drug assistance program. (1) To the extent funds are appropriated specifically for this purpose, and subject to any conditions placed on appropriations made for this purpose, the department shall design a medicaid prescription drug assistance program. Neither the benefits of, nor eligibility for, the program is considered to be an entitlement.

(2) The department shall request any federal waiver necessary to implement this program. Consistent with federal waiver conditions, the department may charge enrollment fees, premiums, or point-of-service cost-sharing to program enrollees.

(3) Eligibility for this program is limited to persons:

(a) Who are eligible for medicare or age sixty-five and older;

(b) Whose family income 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;

(c) Who lack insurance that provides prescription drug coverage; and

(d) Who are not otherwise eligible under Title XIX of the federal social security act.

(4) The department shall use a cost-effective prescription drug benefit design. Consistent with federal waiver conditions, this benefit design may be different than the benefit design offered under the medical assistance program. The benefit design may include a deductible benefit that provides coverage when enrollees incur higher prescription drug costs as defined by the department. The department also may offer more than one benefit design.

(5) The department shall limit enrollment of persons who qualify for the program so as to prevent an overexpenditure of appropriations for this program or to assure necessary compliance with federal waiver budget neutrality requirements. The department may not reduce existing medical assistance program eligibility or benefits to assure compliance with federal waiver budget neutrality requirements.

(6) Premiums paid by medicaid enrollees not in the medicaid prescription drug assistance program may not be used to finance the medicaid prescription drug assistance program.

(7) This program will be terminated within twelve months after implementation of a prescription drug benefit under Title XVIII of the federal social security act.

(8) The department shall provide recommendations to the appropriate committees of the senate and house of representatives by November 15, 2003, on financing options available to support the medicaid prescription drug assistance program. In recommending financing options, the department shall explore every opportunity to maximize federal funding to support the program. [2003 1st sp.s. c 29 § 2.]

Finding—Intent—2003 1st sp.s. c 29: "The legislature finds that prescription drugs are an effective and important part of efforts to maintain and improve the health of Washington state residents. However, their increased cost and utilization is straining the resources of many state health care programs, and is particularly hard on low-income elderly people who lack insurance coverage for such drugs. Furthermore, inappropriate use of prescription drugs can result in unnecessary expenditures and lead to serious health consequences. It is therefore the intent of the legislature to support the establishment by the state of an evidence-based prescription drug program that identifies preferred drugs, develop programs to provide prescription drugs at an affordable price to those in need, and increase public awareness regarding their safe and cost-effective use." [2003 1st sp.s. c 29 § 1.]

Additional notes found at www.leg.wa.gov

74.09.653 Drug reimbursement policy recommendations. A committee or council required by federal law, within the health care authority, that makes policy recommendations regarding reimbursement for drugs under the requirements of federal law or regulations is subject to chapters 42.30 and *42.32 RCW. [2011 1st sp.s. c 15 § 60; 1997 c 430 § 2. Formerly RCW 43.20A.365.]

***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.

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.

74.09.655 Smoking cessation assistance. The authority shall provide coverage under this chapter for smoking cessation counseling services, as well as prescription and nonprescription agents when used to promote smoking cessation, so long as such agents otherwise meet the definition of "covered outpatient drug" in 42 U.S.C. Sec. 1396r-8(k). However, the authority may initiate an individualized inquiry and determine and implement by rule appropriate coverage limitations as may be required to encourage the use of effective, evidence-based services and prescription and nonprescription agents. The authority shall track per-capita expenditures for a cohort of clients that receive smoking cessation benefits, and submit a cost-benefit analysis to the legislature on or before January 1, 2012. [2011 1st sp.s. c 15 § 39; 2008 c 245 § 1.]

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.

74.09.657 Findings—Family planning services expansion. The legislature finds that:

(1) Over half of all births in Washington state are covered by public programs;

(2) Research has demonstrated that children of unintended pregnancies receive less prenatal care and are at higher risk for premature birth, low birth weight, neurological disorders, and poor academic performance;

(3) In Washington state, over fifty percent of unintended pregnancies occur in women age twenty-five years and older;

(4) Washington state's take charge program has been successful in helping women avoid unintended pregnancies; however, when the caseload declined due to federally mandated changes, the rate of unintended pregnancies increased dramatically;

(5) Expanding family planning services to cover women to two hundred fifty percent of the federal poverty level would align that program's eligibility standard with income eligibility for publicly funded maternity care service; and

(6) Such an expansion would reduce unintended pregnancies and associated costs to the state. [2011 1st sp.s. c 41 § 1.]

Funding reduction—2011 1st sp.s. c 41: "Upon implementation of the expansion directed in RCW 74.09.659, the office of financial management shall reduce general fund—state allotments for the medical assistance program by one million five hundred thousand dollars for fiscal year 2012 and by two million three hundred fifty thousand dollars for fiscal year 2013. The amounts reduced from allotments shall be placed in reserve status and remain unexpended." [2011 1st sp.s. c 41 § 3.]

74.09.658 Home health—Reimbursement—Telemedicine. (1) The home health program shall require registered nurse oversight and intervention, as appropriate. In-person contact between a home health care registered nurse and a patient is not required under the state's medical assistance program for home health services that are: (a) Delivered with the assistance of telemedicine and (b) otherwise eligible for reimbursement as a medically necessary skilled home health nursing visit under the program.

(2) The department or authority, as appropriate, in consultation with home health care service providers shall develop reimbursement rules and, in rule, define the requirements that must be met for a reimbursable skilled nursing visit when services are rendered without a face-to-face visit and are assisted by telemedicine.

(3)(a) The department or authority, as appropriate, shall establish the reimbursement rate for skilled home health nursing services delivered with the assistance of telemedicine that meet the requirements of a reimbursable visit as defined by the department or authority, as appropriate.

(b) Reimbursement is not provided for purchase or lease of telemedicine equipment.

(4) Any home health agency licensed under chapter 70.127 RCW and eligible for reimbursement under the medical programs authorized under this chapter may be reimbursed for services under this section if the service meets the requirements for a reimbursable skilled nursing visit.

(5) Nothing in this section shall be construed to alter the scope of practice of any home health care services provider or authorizes the delivery of home health care services in a setting or manner not otherwise authorized by law.

(6) The use of telemedicine is not intended to replace registered nurse health care visits when necessary.

(7) For the purposes of this section, "telemedicine" means the use of telemonitoring to enhance the delivery of certain home health medical services through:

(a) The provision of certain education related to health care services using audio, video, or data communication instead of a face-to-face visit; or

(b) The collection of clinical data and the transmission of such data between a patient at a distant location and the home health provider through electronic processing technologies. Objective clinical data that may be transmitted includes, but is not limited to, weight, blood pressure, pulse, respirations, blood glucose, and pulse oximetry. [2011 1st sp.s. c 15 § 40; 2009 c 326 § 1.]

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.

74.09.659 Family planning waiver program request. (1) The authority shall continue to submit applications for the family planning waiver program.

(2) The authority shall submit a request to the federal department of health and human services to amend the current family planning waiver program as follows:

(a) Provide coverage for sexually transmitted disease testing and treatment;

(b) Return to the eligibility standards used in 2005 including, but not limited to, citizenship determination based on declaration or matching with federal social security data-

bases, insurance eligibility standards comparable to 2005, and confidential service availability for minors and survivors of domestic and sexual violence; and

(c) By September 30, 2011, submit an application to increase income eligibility to two hundred fifty percent of the federal poverty level, to correspond with income eligibility for publicly funded maternity care services. [2011 1st sp.s. c 41 § 2; 2011 1st sp.s. c 15 § 41; 2009 c 545 § 5.]

Reviser's note: This section was amended by 2011 1st sp.s. c 15 § 41 and by 2011 1st sp.s. c 41 § 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).

Funding reduction—2011 1st sp.s. c 41: See note following RCW 74.09.657.

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—2009 c 545: See note following RCW 43.06.155.

74.09.660 Prescription drug education for seniors—Grant qualifications. Each of the state's area agencies on aging shall implement a program intended to inform and train persons sixty-five years of age and older in the safe and appropriate use of prescription and nonprescription medications. To further this purpose, the department shall award development grants averaging up to twenty-five thousand dollars to each of the agencies upon a showing that:

(1) The agency has the ability to effectively administer such a program, including an understanding of the relevant issues and appropriate outreach and follow-up;

(2) The agency can bring resources to the program in addition to those funded by the grant; and

(3) The program will be a collaborative effort between the agency and other health care programs and providers in the location to be served, including doctors, pharmacists, and long-term care providers. [2003 1st sp.s. c 29 § 8.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

74.09.670 Medical assistance benefits—Incarcerated or committed persons—Suspension. The authority is directed to suspend, rather than terminate, medical assistance benefits by July 1, 2017, for persons who are incarcerated or committed to a state hospital. This must include the ability for a person to apply for medical assistance in suspense status during incarceration, and may not depend upon knowledge of the release date of the person. The authority must provide a progress report describing program design and a detailed fiscal estimate to the governor and relevant committees of the legislature by December 1, 2016. [2016 c 154 § 2.]

Intent—2016 c 154: "Persons with mental illness and persons with substance use disorders in the custody of the criminal justice system need seamless access to community treatment networks and medical assistance upon release from custody to prevent gaps in treatment and reduce barriers to accessing care. Access to care is critical to reduce recidivism and reduce costs associated with relapse, decompensation, and crisis care. In accord with the recommendations of the adult behavioral health system task force, persons should be allowed to apply or retain their enrollment in medical assistance during periods of incarceration. The legislature intends for the Washington state health care authority and the department of social and health services to raise awareness of best clinical practices to engage persons with behavioral health disorders and other chronic conditions during periods of incarceration and confinement to highlight opportunities for good preventive care and standardize reporting and payment practices for services reimbursable by federal law that support the safe transition of the person back into the community." [2016 c 154 § 1.]

74.09.671 Incarcerated persons—Local jails—Behavioral health services—Federal funding. The authority shall collaborate with the department, the Washington state association of counties, the Washington association of sheriffs and police chiefs, and accountable communities of health to improve population health and reduce avoidable use of intensive services and settings by requesting expenditure authority from the federal government to provide behavioral health services to persons who are incarcerated in local jails. The authority in consultation with its partners may narrow its submission to discrete programs or regions of the state as deemed advisable to effectively demonstrate the potential to achieve savings by integrating medical assistance across community and correctional settings. [2016 c 154 § 4.]

Intent—2016 c 154: See note following RCW 74.09.670.

74.09.672 Inmates of a public institution—Exclusion from medicaid coverage—Work release and partial confinement programs. It is the understanding of the legislature that persons participating in a work release program or other partial confinement programs at the state, county, or city level which allow regular freedom during the day to pursue rehabilitative community activities such as participation in work, treatment, or medical care should not be considered "inmates of a public institution" for the purposes of exclusion from medicaid coverage under the social security act. The authority is instructed to obtain any permissions from the federal government necessary to confirm this understanding, and report back to the governor and relevant committees of the legislature. [2016 c 154 § 5.]

Intent—2016 c 154: See note following RCW 74.09.670.

74.09.700 Medical care—Limited casualty program. (1) To the extent of available funds and subject to any conditions placed on appropriations made for this purpose, medical care may be provided under the limited casualty program to persons not eligible for medical assistance or medical care services who are medically needy as defined in the social security Title XIX state plan and medical indigents in accordance with eligibility requirements established by the authority. The eligibility requirements may include minimum levels of incurred medical expenses. This includes residents of nursing facilities, residents of intermediate care facilities for persons with intellectual disabilities, and individuals who are otherwise eligible for section 1915(c) of the federal social security act home and community-based waiver services, administered by the department who are aged, blind, or disabled as defined in Title XVI of the federal social security act and whose income exceeds three hundred percent of the federal supplement security income benefit level.

(2) Determination of the amount, scope, and duration of medical coverage under the limited casualty program shall be the responsibility of the authority, subject to the following:

(a) Only the following services may be covered:

(i) For persons who are medically needy as defined in the social security Title XIX state plan: Inpatient and outpatient hospital services, and home and community-based waiver services;

(ii) For persons who are medically needy as defined in the social security Title XIX state plan, and for persons who are medical indigents under the eligibility requirements established by the authority: Rural health clinic services; physicians' and clinic services; prescribed drugs, dentures, prosthetic devices, and eyeglasses; nursing facility services; and intermediate care facility services for persons with intellectual disabilities; home health services; hospice services; other laboratory and X-ray services; rehabilitative services, including occupational therapy; medically necessary transportation; and other services for which funds are specifically provided in the omnibus appropriations act;

(b) Medical care services provided to the medically indigent and received no more than seven days prior to the date of application shall be retroactively certified and approved for payment on behalf of a person who was otherwise eligible at the time the medical services were furnished: PROVIDED, That eligible persons who fail to apply within the seven-day time period for medical reasons or other good cause may be retroactively certified and approved for payment.

(3) The authority shall establish standards of assistance and resource and income exemptions. All nonexempt income and resources of limited casualty program recipients shall be applied against the cost of their medical care services. [2011 1st sp.s. c 15 § 42; 2010 c 94 § 25; 2001 c 269 § 1; 1993 c 57 § 2. Prior: 1991 sp.s. c 9 § 7; 1991 sp.s. c 8 § 10; 1991 c 233 § 2; 1989 c 87 § 3; 1985 c 5 § 4; 1983 1st ex.s. c 43 § 1; 1982 1st ex.s. c 19 § 1; 1981 2nd ex.s. c 10 § 6; 1981 2nd ex.s. c 3 § 6; 1981 1st ex.s. c 6 § 22.]

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.

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

Additional notes found at www.leg.wa.gov

74.09.710 Chronic care management programs—Medical homes—Definitions. (1) The authority, in collaboration with the department of health and the department of social and health services, shall:

(a) Design and implement medical homes for its aged, blind, and disabled clients in conjunction with chronic care management programs to improve health outcomes, access, and cost-effectiveness. Programs must be evidence based, facilitating the use of information technology to improve quality of care, must acknowledge the role of primary care providers and include financial and other supports to enable these providers to effectively carry out their role in chronic care management, and must improve coordination of primary, acute, and long-term care for those clients with multiple chronic conditions. The authority shall consider expansion of existing medical home and chronic care management programs and build on the Washington state collaborative initiative. The authority shall use best practices in identifying those clients best served under a chronic care management model using predictive modeling through claims or other health risk information; and

(b) Evaluate the effectiveness of current chronic care management efforts in the authority and the department, comparison to best practices, and recommendations for future efforts and organizational structure to improve chronic care management.

(2) For purposes of this section:

(a) "Medical home" means a site of care that provides comprehensive preventive and coordinated care centered on the patient needs and assures high quality, accessible, and efficient care.

(b) "Chronic care management" means the authority's program that provides care management and coordination activities for medical assistance clients determined to be at risk for high medical costs. "Chronic care management" provides education and training and/or coordination that assist program participants in improving self-management skills to improve health outcomes and reduce medical costs by educating clients to better utilize services. [2011 1st sp.s. c 15 § 43; 2007 c 259 § 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.

Additional notes found at www.leg.wa.gov

74.09.715 Access to dental care. Within funds appropriated for this purpose, the authority shall establish two dental access projects to serve seniors and other adults who are categorically needy blind or disabled. The projects shall provide:

(1) Enhanced reimbursement rates for certified dentists for specific procedures, to begin no sooner than July 1, 2009;

(2) Reimbursement for trained medical providers for preventive oral health services, to begin no sooner than July 1, 2009;

(3) Training, development, and implementation through a partnership with the University of Washington school of dentistry;

(4) Local program coordination including outreach and case management; and

(5) An evaluation that measures the change in utilization rates and cost savings. [2011 1st sp.s. c 15 § 44; 2008 c 146 § 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.

Findings—Intent—Severability—2008 c 146: See notes following RCW 74.41.040.

74.09.717 Dental health aide therapist services—Federal funding. (1) It is the intent of the legislature to provide that dental health aide therapist services are eligible for medicaid funding in order to promote increased dental care access for persons served in settings operated by Indian tribes, tribal organizations, and urban Indian organizations.

(2) The health care authority is directed to coordinate with the centers for medicare and medicaid services to provide that dental health aide therapist services authorized in chapter 70.350 RCW are eligible for federal funding of up to one hundred percent. [2017 c 5 § 8.]

74.09.719 Compact of free association islander dental care program. (1) The COFA islander dental care program is established to provide dental services to COFA citizens who meet the requirements in subsection (2) of this section. The authority shall begin administering this program by January 1, 2020.

(2) Subject to the availability of amounts appropriated for this specific purpose, the program shall provide dental services as covered under RCW 74.09.520 to an individual who is eligible for the COFA premium assistance program under RCW 43.71A.020, or:

(a) Is a resident;

(b) Is a COFA citizen;

(c) Has income that is less than one hundred thirty-three percent of the federal poverty level; and

(d) Is enrolled in medicare coverage under Title XVIII of the social security act (42 U.S.C. Sec. 1395 et seq., as amended).

(3) The authority may disqualify a participant from the program if the participant:

(a) No longer meets the eligibility criteria in subsection (2) of this section;

(b) Fails, without good cause, to comply with procedural or documentation requirements established by the authority in accordance with subsection (4) of this section;

(c) Fails, without good cause, to notify the authority of a change of address in a timely manner; or

(d) Withdraws the participant's application or requests termination of coverage.

(4) The authority shall establish:

(a) Application, enrollment, and renewal processes for the COFA islander dental care program; and

(b) Procedural requirements for continued participation in the program, including participant documentation requirements that are necessary for the authority to administer the program.

(5) For the purposes of this section, "COFA citizen" has the same meaning as in RCW 43.71A.010. [2019 c 311 § 4.]

Findings—Intent—2019 c 311: "(1) The legislature finds that:

(a) The legislature recognized the important relationship between the citizens of the compact of free association (COFA) nations and the United States by enacting the COFA premium assistance program in 2018 to pay for premiums and out-of-pocket expenses for COFA citizens who purchase qualifying health coverage;

(b) While other Washingtonians who are income-eligible for medicaid receive dental coverage through apple health, individuals enrolled in the COFA premium assistance program do not currently have affordable access to dental coverage;

(c) Affordable access to dental care, including preventative care, is critical to treating the whole body health of an individual and preventing systemic health problems such as stroke, heart attack, and diabetes. Poor oral health is also associated with a wide range of hardships including difficulty obtaining employment, work absences due to pain, and decreased productivity; and

(d) Research shows that people living in households in which the primary language spoken at home is not English, seniors, people with disabilities, and people who identify as Native Hawaiian or Pacific Islanders are disproportionately impacted by oral health inequities.

(2) The legislature therefore intends to increase access to dental services for COFA islanders residing in Washington by establishing a dental services program that provides dental coverage to income-eligible members of this population." [2019 c 311 § 1.]

74.09.720 Prevention of blindness program. (1) A prevention of blindness program is hereby established in the authority to provide prompt, specialized medical eye care, including assistance with costs when necessary, for conditions in which sight is endangered or sight can be restored or significantly improved. The authority shall adopt rules concerning program eligibility, levels of assistance, and the scope of services.

(2) The authority shall employ on a part-time basis an ophthalmological and/or an optometrical consultant to provide liaison with participating eye physicians and to review medical recommendations made by an applicant's eye physician to determine whether the proposed services meet program standards.

(3) The authority and the department of services for the blind shall formulate a cooperative agreement concerning referral of clients between the two agencies and the coordination of policies and services. [2011 1st sp.s. c 15 § 45; 1983 c 194 § 26.]

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.

74.09.725 Prostate cancer screening. The authority shall provide coverage for prostate cancer screening under this chapter, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant. [2011 1st sp.s. c 15 § 46; 2006 c 367 § 8.]

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.

74.09.730 Disproportionate share hospital adjustment. (1) In establishing Title XIX payments for inpatient hospital services:

(a) To the extent funds are appropriated specifically for this purpose, and subject to any conditions placed on appropriations made for this purpose, the authority shall provide a disproportionate share hospital adjustment considering the following components:

(i) A low-income care component based on a hospital's medicaid utilization rate, its low-income utilization rate, its provision of obstetric services, and other factors authorized by federal law;

(ii) A medical indigency care component based on a hospital's services to persons who are medically indigent; and

(iii) A state-only component, to be paid from available state funds to hospitals that do not qualify for federal payments under (a)(ii) of this subsection, based on a hospital's services to persons who are medically indigent;

(b) The payment methodology for disproportionate share hospitals shall be specified by the authority in regulation.

(2) Nothing in this section shall be construed as a right or an entitlement by any hospital to any payment from the authority. [2018 c 201 § 7020; 2011 1st sp.s. c 15 § 47; 2009 c 538 § 1; 1991 sp.s. c 9 § 8; 1989 c 260 § 1; 1987 1st ex.s. c 5 § 20.]

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

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

74.09.741 Adjudicative proceedings. (1) The following persons have the right to an adjudicative proceeding:

(a) Any applicant or recipient who is aggrieved by a decision of the authority or an authorized agency of the authority; or

(b) A current or former recipient who is aggrieved by the authority's claim that he or she owes a debt for overpayment of assistance.

(2) For purposes of this section:

(a) "Applicant" means any person who has made a request, or on behalf of whom a request has been made to the authority for any medical services program established under chapter 74.09 RCW.

(b) "Recipient" means a person who is receiving benefits from the authority for any medical services program established in this chapter.

(3) An applicant or recipient has no right to an adjudicative proceeding when the sole basis for the authority's decision is a federal or state law requiring an assistance adjustment for a class of applicants or recipients.

(4) An applicant or recipient may file an application for an adjudicative proceeding with either the authority or the department and must do so within ninety calendar days after receiving notice of the aggrieving decision. The authority shall determine which agency is responsible for representing the state of Washington in the hearing, in accordance with agreements entered pursuant to RCW 41.05.021.

(5)(a) The adjudicative proceeding is governed by the administrative procedure act, chapter 34.05 RCW, and this subsection. The following requirements shall apply to adjudicative proceedings in which an appellant seeks review of decisions made by more than one agency. When an appellant files a single application for an adjudicative proceeding seeking review of decisions by more than one agency, this review shall be conducted initially in one adjudicative proceeding. The presiding officer may sever the proceeding into multiple proceedings on the motion of any of the parties, when:

(i) All parties consent to the severance; or

(ii) Either party requests severance without another party's consent, and the presiding officer finds there is good cause for severing the matter and that the proposed severance is not likely to prejudice the rights of an appellant who is a party to any of the severed proceedings.

(b) If there are multiple adjudicative proceedings involving common issues or parties where there is one appellant and both the authority and the department are parties, upon motion of any party or upon his or her own motion, the presiding offer may consolidate the proceedings if he or she finds that the consolidation is not likely to prejudice the rights of the appellant who is a party to any of the consolidated proceedings.

(c) The adjudicative proceeding shall be conducted at the local community services office or other location in Washington convenient to the applicant or recipient and, upon agreement by the applicant or recipient, may be conducted telephonically.

(d) The applicant or recipient, or his or her representative, has the right to inspect his or her file from the authority and, upon request, to receive copies of authority documents relevant to the proceedings free of charge.

(e) The applicant or recipient has the right to a copy of the audio recording of the adjudicative proceeding free of charge.

(f) If a final adjudicative order is issued in favor of an applicant, medical services benefits must be provided from the date of earliest eligibility, the date of denial of the application for assistance, or forty-five days following the date of application, whichever is soonest. If a final adjudicative order is issued in favor of a recipient, medical services benefits must be provided from the effective date of the authority's decision.

(g) The authority is limited to recovering an overpayment arising from assistance being continued pending the adjudicative proceeding to the amount recoverable up to the sixtieth day after the director's receipt of the application for an adjudicative proceeding.

(6) If the director requires that a party seek administrative review of an initial order to an adjudicative proceeding governed by this section, in order for the party to exhaust administrative remedies pursuant to RCW 34.05.534, the director shall adopt and implement rules in accordance with this subsection.

(a) The director, in consultation with the secretary, shall adopt rules to create a process for parties to seek administrative review of initial orders issued pursuant to RCW 34.05.461 in adjudicative proceedings governed by this subsection when multiple agencies are parties.

(b) This process shall seek to minimize any procedural complexities imposed on appellants that result from multiple agencies being parties to the matter, without prejudicing the rights of parties who are public assistance applicants or recipients.

(c) Nothing in this subsection shall impose or modify any legal requirement that a party seek administrative review of initial orders in order to exhaust administrative remedies pursuant to RCW 34.05.534.

(7) This subsection only applies to an adjudicative proceeding in which the appellant is an applicant for or recipient of medical services programs established under this chapter and the issue is his or her eligibility or ineligibility due to the assignment or transfer of a resource. The burden is on the authority or its authorized agency to prove by a preponderance of the evidence that the person knowingly and willingly assigned or transferred the resource at less than market value for the purpose of qualifying or continuing to qualify for medical services programs established under this chapter. If the prevailing party in the adjudicative proceeding is the applicant or recipient, he or she is entitled to reasonable attorneys' fees.

(8) When an applicant or recipient files a petition for judicial review as provided in RCW 34.05.514 of an adjudicative order entered with respect to the medical services program, no filing fee may be collected from the person and no bond may be required on any appeal. In the event that the superior court, the court of appeals, or the supreme court renders a decision in favor of the applicant or recipient, the person is entitled to reasonable attorneys' fees and costs. If a decision of the court is made in favor of an applicant, assistance shall be paid from the date of earliest eligibility, the date of the denial of the application for assistance, or forty-five days following the date of application, whichever is soonest. If a decision of the court is made in favor of a recipient, assistance shall be paid from the effective date of the authority's decision.

(9) The provisions of RCW 74.08.080 do not apply to adjudicative proceedings requested or conducted with respect to the medical services program pursuant to this section.

(10) The authority shall adopt any rules it deems necessary to implement this section. [2011 1st sp.s. c 15 § 53.]

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.

74.09.745 Medicaid funding for home visiting services—Recommendations to legislature. (1) The authority shall collaborate with the department of children, youth, and families to identify opportunities to leverage medicaid funding for home visiting services.

(2) The authority must provide a set of recommendations relevant to subsection (1) of this section to the legislature by December 1, 2018, that builds upon the research and strategies developed in the Washington state home visiting and medicaid financing strategies report submitted by the authority to the department of early learning in August 2017. [2018 c 175 § 4.]

Findings—Intent—2018 c 175: See note following RCW 74.09.495.

74.09.748 Regional service areas—Certain reimbursements required or allowed upon adoption of fully integrated managed health care system. Upon adoption of a fully integrated managed health care system pursuant to chapter 71.24 RCW, regional service areas:

(1) Must allow reimbursement for time spent supervising persons working toward satisfying supervision requirements established for the relevant practice areas pursuant to RCW 18.225.090; and

(2) May allow reimbursement for services delivered through a partial hospitalization or intensive outpatient program as described in RCW 71.24.385. [2018 c 175 § 8.]

Findings—Intent—2018 c 175: See note following RCW 74.09.495.

74.09.756 Medicaid and state children's health insurance program demonstration project. (1) By October 1, 2011, the department shall submit a request to the centers for medicare and medicaid services' innovation center and, if necessary, a request under section 1115 of the social security act, to implement a medicaid and state children's health insurance program demonstration project. The demonstration project shall be designed to achieve the broadest federal financial participation and, to the extent permitted under federal law, shall authorize:

(a) Establishment of base-year, eligibility group per capita payments, with maximum flexibility provided to the state for managing the health care trend and provisions for shared savings if per capita expenditures are below the negotiated rates. The capped eligibility group per capita payments shall: (i) Be based on targeted per capita costs for the full duration of the demonstration period; (ii) include due consideration and flexibility for unforeseen events, changes in the delivery of health care, and changes in federal or state law; and (iii) take into account the effect of the federal patient protection and affordable care act on federal resources devoted to medicaid and state children's health insurance programs. Federal payments for each eligibility group shall be based on the product of the negotiated per capita payments for the eligibility group multiplied by the actual caseload for the eligibility group;

(b) Coverage of benefits determined to be essential health benefits under section 1302(b) of the federal patient protection and affordable care act, 42 U.S.C. 18022(b), with coverage of benefits in addition to the essential health benefits as appropriate for distinct categories of enrollees such as children, pregnant women, individuals with disabilities, and elderly adults;

(c) Limited, reasonable, and enforceable cost sharing and premiums to encourage informed consumer behavior and appropriate utilization of health services, while ensuring that access to evidence-based, preventative and primary care is not hindered;

(d) Streamlined eligibility determinations;

(e) Innovative reimbursement methods such as bundled, global, and risk-bearing payment arrangements, that promote effective purchasing, efficient use of health services, and support health homes, accountable care organizations, and other innovations intended to contain costs, improve health, and incent smart consumer decision making;

(f) Clients to voluntarily enroll in the insurance exchange, and broadened enrollment in employer-sponsored insurance when available and deemed cost-effective for the state, with authority to require clients to remain enrolled in their chosen plan for the calendar year;

(g) An expedited process of forty-five days or less in which the centers for medicare and medicaid services must respond to any state request for changes to the demonstration project once it is implemented to ensure that the state has the necessary flexibility to manage within its eligibility group per capita payment caps; and

(h) The development of an alternative payment methodology for federally qualified health centers and rural health clinics that enables capitated or global payment of enhanced payments.

(2) The department shall provide status reports to the joint legislative select committee on health reform implementation as requested by the committee.

(3) The department shall provide multiple opportunities for stakeholders and the general public to review and comment on the request as it developed.

(4) The department shall identify changes to state law necessary to ensure successful and timely implementation of the demonstration project. [2011 1st sp.s. c 1 § 2.]

Findings—2011 1st sp.s. c 1: "The legislature finds that mounting budget pressures combined with growth in enrollment and constraints in the medicaid program have forced open discussion throughout the country and in our state concerning complete withdrawal from the medicaid program. The legislature recognizes that a better and more sustainable way forward would involve new state flexibility for managing its medicaid program built on the success of the basic health plan and Washington's transitional bridge waiver, where elements of consumer participation and choice, benefit design flexibility, and payment flexibility have helped keep costs low. The legislature further finds that either a centers for medicare and medicaid services' innovation center project or a section 1115 demonstration project, or both, with capped eligibility group per capita payments would allow the state to operate as a laboratory of innovation for bending the cost curve, preserving the safety net, and improving the management of care for low-income populations." [2011 1st sp.s. c 1 § 1.]

74.09.758 Medicaid procurement of services—Value-based contracting for medicaid and public employee purchasing. ***(Effective until January 1, 2020.)*** (1) The authority and the department may restructure medic-

aid procurement of health care services and agreements with managed care systems on a phased basis to better support integrated physical health, mental health, and chemical dependency treatment, consistent with assumptions in Second Substitute Senate Bill No. 6312, Laws of 2014, and recommendations provided by the behavioral health task force. The authority and the department may develop and utilize innovative mechanisms to promote and sustain integrated clinical models of physical and behavioral health care.

(2) The authority and the department may incorporate the following principles into future medicaid procurement efforts aimed at integrating the delivery of physical and behavioral health services:

(a) Medicaid purchasing must support delivery of integrated, person-centered care that addresses the spectrum of individuals' health needs in the context of the communities in which they live and with the availability of care continuity as their health needs change;

(b) Accountability for the client outcomes established in RCW 43.20A.895 and 71.36.025 and performance measures linked to those outcomes;

(c) Medicaid benefit design must recognize that adequate preventive care, crisis intervention, and support services promote a recovery-focused approach;

(d) Evidence-based care interventions and continuous quality improvement must be enforced through contract specifications and performance measures that provide meaningful integration at the patient care level with broadly distributed accountability for results;

(e) Active purchasing and oversight of medicaid managed care contracts is a state responsibility;

(f) A deliberate and flexible system change plan with identified benchmarks to promote system stability, provide continuity of treatment for patients, and protect essential existing behavioral health system infrastructure and capacity; and

(g) Community and organizational readiness are key determinants of implementation timing; a phased approach is therefore desirable.

(3) The principles identified in subsection (2) of this section are not intended to create an individual entitlement to services.

(4) The authority shall increase the use of value-based contracting, alternative quality contracting, and other payment incentives that promote quality, efficiency, cost savings, and health improvement, for medicaid and public employee purchasing. The authority shall also implement additional chronic disease management techniques that reduce the subsequent need for hospitalization or readmissions. It is the intent of the legislature that the reforms the authority implements under this subsection are anticipated to reduce extraneous medical costs, across all medical programs, when fully phased in by fiscal year 2017 to generate budget savings identified in the omnibus appropriations act. [2014 c 223 § 7.]

Finding—2014 c 223: See note following RCW 41.05.800.

74.09.758 Medicaid procurement of services—Value-based contracting for medicaid and public employee purchasing. ***(Effective January 1, 2020.)*** (1) The authority and the department may restructure medicaid procurement of health care services and agreements with managed care systems on a phased basis to better support integrated physical health, mental health, and substance use disorder treatment, consistent with assumptions in Second Substitute Senate Bill No. 6312, Laws of 2014, and recommendations provided by the behavioral health task force. The authority and the department may develop and utilize innovative mechanisms to promote and sustain integrated clinical models of physical and behavioral health care.

(2) The authority and the department may incorporate the following principles into future medicaid procurement efforts aimed at integrating the delivery of physical and behavioral health services:

(a) Medicaid purchasing must support delivery of integrated, person-centered care that addresses the spectrum of individuals' health needs in the context of the communities in which they live and with the availability of care continuity as their health needs change;

(b) Accountability for the client outcomes established in RCW 71.24.435 and 71.36.025 and performance measures linked to those outcomes;

(c) Medicaid benefit design must recognize that adequate preventive care, crisis intervention, and support services promote a recovery-focused approach;

(d) Evidence-based care interventions and continuous quality improvement must be enforced through contract specifications and performance measures that provide meaningful integration at the patient care level with broadly distributed accountability for results;

(e) Active purchasing and oversight of medicaid managed care contracts is a state responsibility;

(f) A deliberate and flexible system change plan with identified benchmarks to promote system stability, provide continuity of treatment for patients, and protect essential existing behavioral health system infrastructure and capacity; and

(g) Community and organizational readiness are key determinants of implementation timing; a phased approach is therefore desirable.

(3) The principles identified in subsection (2) of this section are not intended to create an individual entitlement to services.

(4) The authority shall increase the use of value-based contracting, alternative quality contracting, and other payment incentives that promote quality, efficiency, cost savings, and health improvement, for medicaid and public employee purchasing. The authority shall also implement additional chronic disease management techniques that reduce the subsequent need for hospitalization or readmissions. It is the intent of the legislature that the reforms the authority implements under this subsection are anticipated to reduce extraneous medical costs, across all medical programs, when fully phased in by fiscal year 2017 to generate budget savings identified in the omnibus appropriations act. [2019 c 325 § 5029; 2014 c 223 § 7.]

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

Finding—2014 c 223: See note following RCW 41.05.800.

MATERNITY CARE ACCESS PROGRAM

74.09.760 Short title—1989 1st ex.s. c 10. This act may be known and cited as the "maternity care access act of 1989." [1989 1st ex.s. c 10 § 1.]

74.09.770 Maternity care access system established. (1) The legislature finds that Washington state and the nation as a whole have a high rate of infant illness and death compared with other industrialized nations. This is especially true for minority and low-income populations. Premature and low weight births have been directly linked to infant illness and death. The availability of adequate maternity care throughout the course of pregnancy has been identified as a major factor in reducing infant illness and death. Further, the investment in preventive health care programs, such as maternity care, contributes to the growth of a healthy and productive society and is a sound approach to health care cost containment. The legislature further finds that access to maternity care for low-income women in the state of Washington has declined significantly in recent years and has reached a crisis level.

(2) It is the purpose of this subchapter to provide, consistent with appropriated funds, maternity care necessary to ensure healthy birth outcomes for low-income families. To this end, a maternity care access system is established based on the following principles:

(a) The family is the fundamental unit in our society and should be supported through public policy.

(b) Access to maternity care for eligible persons to ensure healthy birth outcomes should be made readily available in an expeditious manner through a single service entry point.

(c) Unnecessary barriers to maternity care for eligible persons should be removed.

(d) Access to preventive and other health care services should be available for low-income children.

(e) Each woman should be encouraged to and assisted in making her own informed decisions about her maternity care.

(f) Unnecessary barriers to the provision of maternity care by qualified health professionals should be removed.

(g) The system should be sensitive to cultural differences among eligible persons.

(h) To the extent possible, decisions about the scope, content, and delivery of services should be made at the local level involving a broad representation of community interests.

(i) The maternity care access system should be evaluated at appropriate intervals to determine effectiveness and need for modification.

(j) Maternity care services should be delivered in a cost-effective manner. [2011 1st sp.s. c 15 § 48; 1989 1st ex.s. c 10 § 2.]

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.

74.09.780 Reservation of legislative power. The legislature reserves the right to amend or repeal all or any part of this subchapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All rights, privileges, or immunities conferred by this subchapter or any acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this subchapter at any time. [2018 c 201 § 7021; 1989 1st ex.s. c 10 § 3.]

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

74.09.790 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 74.09.760 through 74.09.820 and 74.09.510:

(1) "At-risk eligible person" means an eligible person determined by the authority to need special assistance in applying for and obtaining maternity care, including pregnant women who are substance abusers, pregnant and parenting adolescents, pregnant minority women, and other eligible persons who need special assistance in gaining access to the maternity care system.

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

(3) "County authority" means the board of county commissioners, county council, or county executive having the authority to participate in the maternity care access program or its designee. Two or more county authorities may enter into joint agreements to fulfill the requirements of this chapter.

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

(5) "Eligible person" means a woman in need of maternity care or a child, who is eligible for medical assistance pursuant to this chapter or the prenatal care program administered by the authority.

(6) "Family planning services" means planning the number of one's children by use of contraceptive techniques.

(7) "Maternity care services" means inpatient and outpatient medical care, case management, and support services necessary during prenatal, delivery, and postpartum periods.

(8) "Support services" means, at least, public health nursing assessment and follow-up, health and childbirth education, psychological assessment and counseling, outreach services, nutritional assessment and counseling, needed vitamin and nonprescriptive drugs, transportation, family planning services, and child care. Support services may include alcohol and substance abuse treatment for pregnant women who are addicted or at risk of being addicted to alcohol or drugs to the extent funds are made available for that purpose. [2011 1st sp.s. c 15 § 49; 1993 c 407 § 9; 1990 c 151 § 4; 1989 1st ex.s. c 10 § 4.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

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.

74.09.800 Maternity care access program established. The authority shall, consistent with the state budget act, develop a maternity care access program designed to ensure healthy birth outcomes as follows:

(1) Provide maternity care services to low-income pregnant women and health care services to children in poverty to the maximum extent allowable under the medical assistance program, Title XIX of the federal social security act;

(2) Provide maternity care services to low-income women who are not eligible to receive such services under the medical assistance program, Title XIX of the federal social security act;

(3) Have the following procedures in place to improve access to maternity care services and eligibility determinations for pregnant women applying for maternity care services under the medical assistance program, Title XIX of the federal social security act:

(a) Use of a shortened and simplified application form;

(b) Outstationing authority staff to make eligibility determinations;

(c) Establishing local plans at the county and regional level, coordinated by the authority; and

(d) Conducting an interview for the purpose of determining medical assistance eligibility within five working days of the date of an application by a pregnant woman and making an eligibility determination within fifteen working days of the date of application by a pregnant woman;

(4) Establish a maternity care case management system that shall assist at-risk eligible persons with obtaining medical assistance benefits and receiving maternity care services, including transportation and child care services;

(5) Within available resources, establish appropriate reimbursement levels for maternity care providers;

(6) Implement a broad-based public education program that stresses the importance of obtaining maternity care early during pregnancy;

(7) Refer persons eligible for maternity care services under the program established by this section to persons, agencies, or organizations with maternity care service practices that primarily emphasize healthy birth outcomes;

(8) Provide family planning services including information about the synthetic progestin capsule implant form of contraception, for twelve months immediately following a pregnancy to women who were eligible for medical assistance under the maternity care access program during that pregnancy or who were eligible only for emergency labor and delivery services during that pregnancy; and

(9) Within available resources, provide family planning services to women who meet the financial eligibility requirements for services under subsections (1) and (2) of this section. [2011 1st sp.s. c 15 § 50; 1993 c 407 § 10; 1989 1st ex.s. c 10 § 5.]

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.

74.09.810 Alternative maternity care service delivery system established—Remedial action report. (1) The authority shall establish an alternative maternity care service delivery system, if it determines that a county or a group of counties is a maternity care distressed area. A maternity care distressed area shall be defined by the authority, in rule, as a county or a group of counties where eligible women are unable to obtain adequate maternity care. The authority shall include the following factors in its determination:

(a) Higher than average percentage of eligible persons in the distressed area who receive late or no prenatal care;

(b) Higher than average percentage of eligible persons in the distressed area who go out of the area to receive maternity care;

(c) Lower than average percentage of obstetrical care providers in the distressed area who provide care to eligible persons;

(d) Higher than average percentage of infants born to eligible persons per obstetrical care provider in the distressed area; and

(e) Higher than average percentage of infants that are of low birth weight, five and one-half pounds or two thousand five hundred grams, born to eligible persons in the distressed area.

(2) If the authority determines that a maternity care distressed area exists, it shall notify the relevant county authority. The county authority shall, within one hundred twenty days, submit a brief report to the authority recommending remedial action. The report shall be prepared in consultation with the authority and with the department's local community service offices, the local public health officer, community health clinics, health care providers, hospitals, the business community, labor representatives, and low-income advocates in the distressed area. A county authority may contract with a local nonprofit entity to develop the report. If the county authority is unwilling or unable to develop the report, it shall notify the authority within thirty days, and the authority shall develop the report for the distressed area.

(3) The authority shall review the report and use it, to the extent possible, in developing strategies to improve maternity care access in the distressed area. The authority may contract with or directly employ qualified maternity care health providers to provide maternity care services, if access to such providers in the distressed area is not possible by other means. In such cases, the authority is authorized to pay that portion of the health care providers' malpractice liability insurance that represents the percentage of maternity care provided to eligible persons by that provider through increased medical assistance payments. [2011 1st sp.s. c 15 § 51; 1989 1st ex.s. c 10 § 6.]

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.

74.09.820 Maternity care provider's loan repayment program. To the extent that federal matching funds are available, the authority or the department of health shall establish, in consultation with the health science programs of the state's colleges and universities, and community health clinics, a loan repayment program that will encourage maternity care providers to practice in medically underserved areas in exchange for repayment of part or all of their health education loans. [2011 1st sp.s. c 15 § 52; 1989 1st ex.s. c 10 § 7.]

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.

Health professional scholarships: Chapter 28B.115 RCW.

74.09.850 Conflict with federal requirements. If any part of this chapter is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter

is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter. [1981 2nd ex.s. c 3 § 7.]

Additional notes found at www.leg.wa.gov

74.09.860 Request for proposals—Foster children—Integrated managed health and behavioral health care—Continuation of health care benefits following reunification. (1) The authority shall issue a request for proposals to provide integrated managed health and behavioral health care for foster children receiving care through the medical assistance program. Behavioral health services provided under chapters 71.24 and 71.34 RCW must be integrated into the managed health care plan for foster children beginning January 1, 2019. The request for proposals must address the program elements described in section 110, chapter 225, Laws of 2014, including development of a service delivery system, benefit design, reimbursement mechanisms, incorporation or coordination of services currently provided by the regional support networks, and standards for contracting with health plans. The request for proposals must be issued and completed in time for services under the integrated managed care plan to begin on October 1, 2016.

(2) The parent or guardian of a child who is no longer a dependent child pursuant to chapter 13.34 RCW may choose to continue in the transitional foster care eligibility category for up to twelve months following reunification with the child's parents or guardian if the child:

(a) Is under eighteen years of age;

(b) Was in foster care under the legal responsibility of the department of social and health services, the department of children, youth, and families, or a federally recognized Indian tribe located within the state; and

(c) Meets income and other eligibility standards for medical assistance coverage. [2018 c 27 § 1; 2015 c 283 § 1.]

Effective date—2018 c 27: "This act takes effect July 1, 2018." [2018 c 27 § 2.]

74.09.870 Regional service areas—Establishment. (1) Upon receipt of guidance for the creation of common regional service areas from the adult behavioral health system task force established in section 1, chapter 338, Laws of 2013, the authority shall establish regional service areas as provided in this section.

(2) Counties, through the Washington state association of counties, must be given the opportunity to propose the composition of regional service areas. Each service area must:

(a) Include a sufficient number of medicaid lives to support full financial risk managed care contracting for services included in contracts with the department or the authority;

(b) Include full counties that are contiguous with one another; and

(c) Reflect natural medical and behavioral health service referral patterns and shared clinical, health care service, behavioral health service, and behavioral health crisis response resources.

(3) The Washington state association of counties must submit their recommendations to the department, the authority, and the task force described in section 1, chapter 225, Laws of 2014 on or before August 1, 2014. [2018 c 201 § 2006; 2014 c 225 § 2. Formerly RCW 43.20A.893.]

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

74.09.871 Behavioral health organizations—Contracting process. ***(Effective until January 1, 2020.)*** (1) Any agreement or contract by the authority to provide behavioral health services as defined under RCW 71.24.025 to persons eligible for benefits under medicaid, Title XIX of the social security act, and to persons not eligible for medicaid must include the following:

(a) Contractual provisions consistent with the intent expressed in RCW 71.24.015, 71.36.005, and *70.96A.011;

(b) Standards regarding the quality of services to be provided, including increased use of evidence-based, research-based, and promising practices, as defined in RCW 71.24.025;

(c) Accountability for the client outcomes established in RCW 43.20A.895, 70.320.020, and 71.36.025 and performance measures linked to those outcomes;

(d) Standards requiring behavioral health organizations to 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 and to protect essential existing behavioral health system infrastructure and capacity, including a continuum of chemical dependency services;

(e) Provisions to require that medically necessary chemical dependency and mental health treatment services be available to clients;

(f) Standards requiring the use of behavioral health service provider reimbursement methods that incentivize improved performance with respect to the client outcomes established in RCW 43.20A.895 and 71.36.025, integration of behavioral health and primary care services at the clinical level, and improved care coordination for individuals with complex care needs;

(g) Standards related to the financial integrity of the responding organization. The authority shall adopt rules establishing the solvency requirements and other financial integrity standards for behavioral health organizations. This subsection does not limit the authority of the authority to take action under a contract upon finding that a behavioral health organization's financial status jeopardizes the organization's ability to meet its contractual obligations;

(h) Mechanisms for monitoring performance under the contract and remedies for failure to substantially comply with the requirements of the contract including, but not limited to, financial deductions, termination of the contract, receivership, reprocurement of the contract, and injunctive remedies;

(i) Provisions to maintain the decision-making independence of designated mental health professionals or designated chemical dependency specialists; and

(j) Provisions stating that public funds appropriated by the legislature may not be used to promote or deter, encourage, or discourage employees from exercising their rights under Title 29, chapter 7, subchapter II, United States Code or chapter 41.56 RCW.

(2) The following factors must be given significant weight in any purchasing process:

(a) Demonstrated commitment and experience in serving low-income populations;

(b) Demonstrated commitment and experience serving persons who have mental illness, chemical dependency, or co-occurring disorders;

(c) Demonstrated commitment to and experience with partnerships with county and municipal criminal justice systems, housing services, and other critical support services necessary to achieve the outcomes established in RCW 43.20A.895, 70.320.020, and 71.36.025;

(d) Recognition that meeting enrollees' physical and behavioral health care needs is a shared responsibility of contracted behavioral health organizations, managed health care systems, service providers, the state, and communities;

(e) Consideration of past and current performance and participation in other state or federal behavioral health programs as a contractor; and

(f) The ability to meet requirements established by the authority.

(3) For purposes of purchasing behavioral health services and medical care services for persons eligible for benefits under medicaid, Title XIX of the social security act and for persons not eligible for medicaid, the authority must use regional service areas. The regional service areas must be established by the authority as provided in RCW 74.09.870.

(4) Consideration must be given to using multiple-biennia contracting periods.

(5) Each behavioral health organization operating pursuant to a contract issued under this section shall enroll clients within its regional service area who meet the authority's eligibility criteria for mental health and chemical dependency services. [2018 c 201 § 2007; 2014 c 225 § 3. Formerly RCW 43.20A.894.]

***Reviser's note:** RCW 70.96A.011 was repealed by 2016 sp.s. c 29 § 301.

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

74.09.871 Behavioral health services—Contracting process. ***(Effective January 1, 2020.)*** (1) Any agreement or contract by the authority to provide behavioral health services as defined under RCW 71.24.025 to persons eligible for benefits under medicaid, Title XIX of the social security act, and to persons not eligible for medicaid must include the following:

(a) Contractual provisions consistent with the intent expressed in RCW 71.24.015 and 71.36.005;

(b) Standards regarding the quality of services to be provided, including increased use of evidence-based, research-based, and promising practices, as defined in RCW 71.24.025;

(c) Accountability for the client outcomes established in RCW 71.24.435, 70.320.020, and 71.36.025 and performance measures linked to those outcomes;

(d) Standards requiring behavioral health administrative services organizations and managed care organizations to 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 and to protect essential behavioral health system infrastructure and capacity, including a continuum of substance use disorder services;

(e) Provisions to require that medically necessary substance use disorder and mental health treatment services be available to clients;

(f) Standards requiring the use of behavioral health service provider reimbursement methods that incentivize improved performance with respect to the client outcomes established in RCW 43.20A.895 (as recodified by this act) and 71.36.025, integration of behavioral health and primary care services at the clinical level, and improved care coordination for individuals with complex care needs;

(g) Standards related to the financial integrity of the contracting entity. This subsection does not limit the authority of the authority to take action under a contract upon finding that a contracting entity's financial status jeopardizes the contracting entity's ability to meet its contractual obligations;

(h) Mechanisms for monitoring performance under the contract and remedies for failure to substantially comply with the requirements of the contract including, but not limited to, financial deductions, termination of the contract, receivership, reprocurement of the contract, and injunctive remedies;

(i) Provisions to maintain the decision-making independence of designated crisis responders; and

(j) Provisions stating that public funds appropriated by the legislature may not be used to promote or deter, encourage, or discourage employees from exercising their rights under Title 29, chapter 7, subchapter II, United States Code or chapter 41.56 RCW.

(2) The following factors must be given significant weight in any procurement process under this section:

(a) Demonstrated commitment and experience in serving low-income populations;

(b) Demonstrated commitment and experience serving persons who have mental illness, substance use disorders, or co-occurring disorders;

(c) Demonstrated commitment to and experience with partnerships with county and municipal criminal justice systems, housing services, and other critical support services necessary to achieve the outcomes established in RCW 71.24.435, 70.320.020, and 71.36.025;

(d) Recognition that meeting enrollees' physical and behavioral health care needs is a shared responsibility of contracted behavioral health administrative services organizations, managed care organizations, service providers, the state, and communities;

(e) Consideration of past and current performance and participation in other state or federal behavioral health programs as a contractor; and

(f) The ability to meet requirements established by the authority.

(3) For purposes of purchasing behavioral health services and medical care services for persons eligible for benefits under medicaid, Title XIX of the social security act and for persons not eligible for medicaid, the authority must use regional service areas. The regional service areas must be established by the authority as provided in RCW 74.09.870.

(4) Consideration must be given to using multiple-biennia contracting periods.

(5) Each behavioral health administrative services organization operating pursuant to a contract issued under this

section shall serve clients within its regional service area who meet the authority's eligibility criteria for mental health and substance use disorder services within available resources. [2019 c 325 § 4006; 2018 c 201 § 2007; 2014 c 225 § 3. Formerly RCW 43.20A.894.]

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.

74.09.872 Behavioral health organizations—Access to chemical dependency and mental health professionals. ***(Effective until January 1, 2020.)*** The director shall require that behavioral health organizations offer contracts to managed health care systems under chapter 74.09 RCW or primary care practice settings to promote access to the services of chemical dependency professionals under chapter 18.205 RCW and mental health professionals, as defined by the department of health in rule, for the purposes of integrating such services into primary care settings for individuals with behavioral health and medical comorbidities. [2018 c 201 § 2008; 2014 c 225 § 4. Formerly RCW 43.20A.896.]

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

74.09.873 Tribal-centric behavioral health system. ***(Effective until January 1, 2020.)*** (1) By November 30, 2013, the department and the authority must report to the governor and the relevant fiscal and policy committees of the legislature, consistent with RCW 43.01.036, a plan that establishes a tribal-centric behavioral health system incorporating both mental health and chemical dependency services. The plan must assure that child, adult, and older adult American Indians and Alaskan Natives eligible for medicaid have increased access to culturally appropriate mental health and chemical dependency services. The plan must:

(a) Include implementation dates, major milestones, and fiscal estimates as needed;

(b) Emphasize the use of culturally appropriate evidence-based and promising practices;

(c) Address equitable access to crisis services, outpatient care, voluntary and involuntary hospitalization, and behavioral health care coordination;

(d) Identify statutory changes necessary to implement the tribal-centric behavioral health system; and

(e) Be developed with the department's Indian policy advisory committee and the American Indian health commission, in consultation with Washington's federally recognized tribes.

(2) The authority shall enter into agreements with the tribes and urban Indian health programs and modify behavioral health organization contracts as necessary to develop a tribal-centric behavioral health system that better serves the needs of the tribes. [2018 c 201 § 2009; 2014 c 225 § 65; 2013 c 338 § 7. Formerly RCW 43.20A.897.]

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.

74.09.875 Reproductive health care services—Prohibited discrimination. ***(Effective January 1, 2020.)*** (1) In the provision of reproductive health care services through programs under this chapter, the authority, managed care plans, and providers that administer or deliver such services may not discriminate in the delivery of a service provided through a program of the authority based on the covered person's gender identity or expression.

(2) The authority and any managed care plans delivering or administering services purchased or contracted for by the authority, may not issue automatic initial denials of coverage for reproductive health care services that are ordinarily or exclusively available to individuals of one gender, based on the fact that the individual's gender assigned at birth, gender identity, or gender otherwise recorded in one or more government-issued documents, is different from the one to which such health services are ordinarily or exclusively available.

(3) Denials as described in subsection (2) of this section are prohibited discrimination under chapter 49.60 RCW.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Gender expression" means a person's gender-related appearance and behavior, whether or not stereotypically associated with the person's gender assigned at birth.

(b) "Gender identity" means a person's internal sense of the person's own gender, regardless of the person's gender assigned at birth.

(c) "Reproductive health care services" means any medical services or treatments, including pharmaceutical and preventive care service or treatments, directly involved in the reproductive system and its processes, functions, and organs involved in reproduction, in all stages of life. Reproductive health care services does not include infertility treatment.

(d) "Reproductive system" includes, but is not limited to: Genitals, gonads, the uterus, ovaries, fallopian tubes, and breasts.

(5) This section must not be construed to authorize discrimination on the basis of a covered person's gender identity or expression in the administration of any other medical assistance programs administered by the authority. [2019 c 399 § 2.]

Effective dates—2019 c 399 §§ 2 and 3: "(1) Section 2 of this act takes effect January 1, 2020.

(2) Section 3 of this act takes effect January 1, 2021." [2019 c 399 § 9.]

Findings—2019 c 399: "The legislature finds and declares:

(1) It is the public policy of this state to provide the maximum access to reproductive health care and reproductive health care coverage for all people in Washington state.

(2) In 2018, the legislature passed Substitute Senate Bill No. 6219. Along with reproductive health care coverage requirements, the bill mandated a literature review of barriers to reproductive health care. As documented by the report submitted to the legislature on January 1, 2019, young people, immigrants, people living in rural communities, transgender and gender nonconforming people, and people of color still face significant barriers to getting the reproductive health care they need.

(3) Washingtonians who are transgender and gender nonconforming have important reproductive health care needs as well. These needs go unmet when, in the process of seeking care, transgender and gender nonconforming people are stigmatized or are denied critical health services because of their gender identity or expression.

(4) The literature review mandated by Substitute Senate Bill No. 6219 found that, "[a]ccording to 2015 U.S. Transgender Survey data, thirty-two percent of transgender respondents in Washington State reported that in the previous year they did not see a doctor when needed because they could not afford it."

(5) Existing state law should be enhanced to ensure greater coverage of and timely access to reproductive health care for the benefit of all Washingtonians, regardless of gender identity or expression.

(6) Because stigma is also a key barrier to access to reproductive health care, all Washingtonians, regardless of gender identity, should be free from discrimination in the provision of health care services, health care plan coverage, and in access to publicly funded health coverage.

(7) All people should have access to robust reproductive health services to maintain and improve their reproductive health." [2019 c 399 § 1.]

Short title—2019 c 399: "This act may be known and cited as the reproductive health care access for all act." [2019 c 399 § 8.]

Recommendations—Preexposure and postexposure prophylaxis financial support awareness—2019 c 399: See note following RCW 48.43.072.

74.09.877 Statewide plan to implement coordinated specialty care programs providing early identification and intervention for psychosis. ***(Expires June 30, 2024.)*** (1) Subject to the availability of amounts appropriated for this specific purpose, the authority shall collaborate with the University of Washington and a professional association of licensed community behavioral health agencies to develop a statewide plan to implement evidence-based coordinated specialty care programs that provide early identification and intervention for psychosis in licensed and certified community behavioral health agencies. The authority must submit the statewide plan to the governor and the legislature by March 1, 2020. The statewide plan must include:

(a) Analysis of existing benefit packages, payment rates, and resource gaps, including needs for nonmedicaid resources;

(b) Development of a discrete benefit package and case rate for coordinated specialty care;

(c) Identification of costs for statewide start-up, training, and community outreach;

(d) Determination of the number of coordinated specialty care teams needed in each regional service area; and

(e) A timeline for statewide implementation.

(2) The authority shall ensure that:

(a) At least one coordinated specialty care team is starting up or in operation in each regional service area by October 1, 2020; and

(b) Each regional service area has an adequate number of coordinated specialty care teams based on incidence and population across the state by December 31, 2023.

(3) This section expires June 30, 2024. [2019 c 360 § 6.]

Findings—Intent—2019 c 360: See note following RCW 74.09.4951.

74.09.900 Other laws applicable. All the provisions of Title 74 RCW, not otherwise inconsistent herewith, shall apply to the provisions of this chapter. [1959 c 26 § 74.09.900. Prior: 1955 c 273 § 22.]

74.09.920 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 § 175.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 74.09A RCW
MEDICAL ASSISTANCE—COORDINATION OF BENEFITS—COMPUTERIZED INFORMATION TRANSFER

Sections

74.09A.005 Findings. The legislature finds that:

(1) Simplification in the administration of payment of health benefits is important for the state, providers, and health insurers;

(2) The state, providers, and health insurers should take advantage of all opportunities to streamline operations through automation and the use of common computer standards;

(3) It is in the best interests of the state, providers, and health insurers to identify all third parties that are obligated to cover the cost of health care coverage of joint beneficiaries; and

(4) Health insurers, as a condition of doing business in Washington, must increase their effort to share information with the authority and accept the authority's timely claims consistent with 42 U.S.C. 1396a(a)(25).

Therefore, the legislature declares that to improve the coordination of benefits between the health care authority and health insurers to ensure that medical insurance benefits are properly utilized, a transfer of information between the authority and health insurers should be instituted, and the process for submitting requests for information and claims should be simplified. [2011 1st sp.s. c 15 § 117; 2007 c 179 § 1; 1993 c 10 § 1.]

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

74.09A.010 Definitions. For the purposes of this chapter:

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

(2) "Computerized" means online or batch processing with standardized format via magnetic tape output.

(3) "Health insurance coverage" includes any policy, contract, or agreement under which health care items or services are provided, arranged, reimbursed, or paid for by a health insurer.

(4) "Health insurer" means any party that is, by statute, policy, contract, or agreement, legally responsible for payment of a claim for a health care item or service, including,

but not limited to, a commercial insurance company providing disability insurance under chapter 48.20 or 48.21 RCW, a health care service contractor providing health care coverage under chapter 48.44 RCW, a health maintenance organization providing comprehensive health care services under chapter 48.46 RCW, an employer or union self-insured plan, any private insurer, a group health plan, a service benefit plan, a managed care organization, a pharmacy benefit manager, and a third party administrator.

(5) "Joint beneficiary" is an individual who has health insurance coverage and is a recipient of public assistance benefits under chapter 74.09 RCW. [2011 1st sp.s. c 15 § 118; 2007 c 179 § 2; 1993 c 10 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

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

74.09A.020 Computerized information—Provision to health insurers. (1) The authority shall provide routine and periodic computerized information to health insurers regarding client eligibility and coverage information. Health insurers shall use this information to identify joint beneficiaries. Identification of joint beneficiaries shall be transmitted to the authority. The authority shall use this information to improve accuracy and currency of health insurance coverage and promote improved coordination of benefits.

(2) To the maximum extent possible, necessary data elements and a compatible database shall be developed by affected health insurers and the authority. The authority shall establish a representative group of health insurers and state agency representatives to develop necessary technical and file specifications to promote a standardized database. The database shall include elements essential to the authority and its population's health insurance coverage information.

(3) If the state and health insurers enter into other agreements regarding the use of common computer standards, the database identified in this section shall be replaced by the new common computer standards.

(4) The information provided will be of sufficient detail to promote reliable and accurate benefit coordination and identification of individuals who are also eligible for authority programs.

(5) The frequency of updates will be mutually agreed to by each health insurer and the authority based on frequency of change and operational limitations. In no event shall the computerized data be provided less than semiannually.

(6) The health insurers and the authority shall safeguard and properly use the information to protect records as provided by law, including but not limited to chapters 42.48, 74.09, 74.04, 70.02, and 42.56 RCW, and 42 U.S.C. Sec. 1396a and 42 C.F.R. Sec. 43 et seq. The purpose of this exchange of information is to improve coordination and administration of benefits and ensure that medical insurance benefits are properly utilized.

(7) The authority shall target implementation of this section to those health insurers with the highest probability of joint beneficiaries. [2011 1st sp.s. c 15 § 119; 2007 c 179 § 3; 2005 c 274 § 350; 1993 c 10 § 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.

Additional notes found at www.leg.wa.gov

74.09A.030 Duties of health insurers—Providing information—Payments—Claims—Costs and fees. Health insurers, as a condition of doing business in Washington, must:

(1) Provide, with respect to individuals who are eligible for, or are provided, medical assistance under chapter 74.09 RCW, upon the request of the authority, information to determine during what period the individual or their spouses or their dependents may be, or may have been, covered by a health insurer and the nature of coverage that is or was provided by the health insurer, including the name, address, and identifying number of the plan, in a manner prescribed by the authority;

(2) Accept the authority's right to recovery and the assignment to the authority of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under chapter 74.09 RCW;

(3) Respond to any inquiry by the authority regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of such health care item or service;

(4) Agree not to deny a claim submitted by the authority solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if:

(a) The claim is submitted by the authority within the three-year period beginning on the date the item or service was furnished; and

(b) Any action by the authority to enforce its rights with respect to such claim is commenced within six years of the authority's submission of such claim; and

(5) Agree that the prevailing party in any legal action to enforce this section receives reasonable attorneys' fees as well as related collection fees and costs incurred in the enforcement of this section. [2011 1st sp.s. c 15 § 120; 2007 c 179 § 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.

Additional notes found at www.leg.wa.gov

74.09A.900 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 § 176.]

Chapter 74.12 RCW
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sections

Agencies for care of children, expectant mothers, individuals with developmental disabilities: Chapter 74.15 RCW.

Children and youth services: Chapter 72.05 RCW.

Enforcement of support of dependent children: Chapters 74.20 and 74.20A RCW.

Sale or gift of tobacco to minor is gross misdemeanor: RCW 26.28.080.

State schools for blind and deaf: Chapter 72.40 RCW.

74.12.010 Definitions. For the purposes of the administration of temporary assistance for needy families, the term "dependent child" means any child in need under the age of eighteen years who is living with a relative as specified under federal temporary assistance for needy families program requirements, in a place of residence maintained by one or more of such relatives as his or her or their homes. The term a "dependent child" shall, notwithstanding the foregoing, also include a child who would meet such requirements except for his or her removal from the home of a relative specified above as a result of a judicial determination that continuation therein would be contrary to the welfare of such child, for whose placement and care the state department of social and health services or the county office is responsible, and who has been placed in a licensed or approved child care institution or foster home as a result of such determination and who: (1) Was receiving an aid to families with dependent children grant for the month in which court proceedings leading to such determination were initiated; or (2) would have received aid to families with dependent children for such month if application had been made therefor; or (3) in the case of a child who had been living with a specified relative within six months prior to the month in which such proceedings were initiated, would have received aid to families with dependent children for such month if in such month he or she had been living with such a relative and application had been made therefor, as authorized by the social security act.

"Temporary assistance for needy families" means money payments, services, and remedial care with respect to a dependent child or dependent children and the needy parent or relative with whom the child lives. [2013 c 23 § 204; 1999 c 120 § 1; 1997 c 59 § 16; 1992 c 136 § 2; 1983 1st ex.s. c 41 § 40; 1981 1st ex.s. c 6 § 23; 1981 c 8 § 21; 1979 c 141 § 350; 1973 2nd ex.s. c 31 § 1; 1969 ex.s. c 173 § 13; 1965 ex.s. c 37 § 1; 1963 c 228 § 18; 1961 c 265 § 1; 1959 c 26 § 74.12.010. Prior: 1957 c 63 § 10; 1953 c 174 § 24; 1941 c 242 § 1; 1937 c 114 § 1; Rem. Supp. 1941 § 9992-101.]

Additional notes found at www.leg.wa.gov

74.12.030 Eligibility. In addition to meeting the eligibility requirements of RCW 74.08.025, as now or hereafter amended, an applicant for temporary assistance for needy families must be a needy child who is a resident of the state of Washington. [1997 c 59 § 17; 1971 ex.s. c 169 § 6; 1963 c 228 § 19; 1959 c 26 § 74.12.030. Prior: 1953 c 174 § 23; 1941 c 242 § 2; 1937 c 114 § 4; Rem. Supp. 1941 § 9992-104.]

74.12.035 Additional eligibility requirements—Students—Exceptions. (1) Children over eighteen years of age and under nineteen years of age who are full-time students reasonably expected to complete a program of secondary school, or the equivalent level of vocational or technical training, before reaching nineteen years of age are eligible to receive temporary assistance for needy families: PROVIDED HOWEVER, That if such students do not successfully complete such program before reaching nineteen years of age, the assistance rendered under this subsection during such period shall not be a debt due the state.

(2) Children with disabilities who are eighteen years of age and under twenty-one years of age and who are full-time students whose education is being provided in accordance with RCW 28A.155.020 are eligible to receive temporary assistance for needy families benefits.

(3) The department is authorized to grant exceptions to the eligibility restrictions for children eighteen years of age and under twenty-one years of age under subsections (1) and (2) of this section only when it determines by reasonable, objective criteria that such exceptions are likely to enable the children to complete their high school education, high school equivalency certificate as provided in RCW 28B.50.536, or vocational education. [2013 c 39 § 29; 1999 c 120 § 2; 1997 c 59 § 18; 1985 c 335 § 1; 1981 2nd ex.s. c 10 § 3.]

State consolidated standards of need: RCW 74.04.770.

74.12.240 Services provided to help attain maximum self-support and independence of parents and relatives. The department is authorized to provide such social and related services as are reasonably necessary to encourage the care of dependent children in their own homes or in the homes of relatives, to help maintain and strengthen family life and to help such parents or relatives to attain maximum self-support and personal independence consistent with the

maintenance of continuing parental care and protection. In the provision of such services, maximum utilization of other agencies providing similar or related services shall be effected. [1959 c 26 § 74.12.240. Prior: 1957 c 63 § 8.]

74.12.250 Payment of grant to another—Limited guardianship. If the department, after investigation, finds that any applicant for assistance under this chapter or any recipient of funds under this chapter would not use, or is not utilizing, the grant adequately for the needs of his or her child or children or would dissipate the grant or is dissipating such grant, or would be or is unable to manage adequately the funds paid on behalf of said child and that to provide or continue payments to the applicant or recipient would be contrary to the welfare of the child, the department may make such payments to another individual who is interested in or concerned with the welfare of such child and relative: PROVIDED, That the department shall provide such counseling and other services as are available and necessary to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family. Periodic review of each case shall be made by the department to determine if said relative is able to resume management of the assistance grant. If after a reasonable period of time the payments to the relative cannot be resumed, the department may request the attorney general to file a petition in the superior court for the appointment of a guardian for the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the department not less than ten days before the date set for such hearing. Such petition may be filed with the clerk of superior court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interest of the child or children, and all parties concerned, that a guardian be appointed, he or she shall order the appointment, and may require the guardian to render to the court a detailed itemized account of expenditures of such assistance payments at such time as the court may deem advisable.

It is the intention of this section that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant, or sooner on order of the court, upon good cause shown. [2013 c 23 § 205; 1997 c 58 § 506; 1963 c 228 § 21; 1961 c 206 § 1.]

Additional notes found at www.leg.wa.gov

74.12.255 Teen applicants' living situation—Criteria—Presumption—Protective payee—Adoption referral. (1) The department shall determine, after consideration of all relevant factors and in consultation with the applicant, the most appropriate living situation for applicants under eighteen years of age, unmarried, and either pregnant or having a dependent child or children in the applicant's care. An appropriate living situation shall include a place of residence that is maintained by the applicant's parents, parent, legal guardian, or other adult relative as their or his or her own home and that the department finds would provide an appropriate supportive living arrangement. It also includes a living situation maintained by an agency that is licensed under chapter 74.15 RCW that the department finds would provide an appropriate supportive living arrangement. Grant assistance shall not be provided under this chapter if the applicant does not reside in the most appropriate living situation, as determined by the department.

(2) An unmarried minor parent or pregnant minor applicant residing in the most appropriate living situation, as provided under subsection (1) of this section, is presumed to be unable to manage adequately the funds paid to the minor or on behalf of the dependent child or children and, unless the minor provides sufficient evidence to rebut the presumption, shall be subject to the protective payee requirements provided for under RCW 74.12.250 and 74.08.280.

(3) The department shall consider any statements or opinions by either parent of the unmarried minor parent or pregnant minor applicant as to an appropriate living situation for the minor and his or her children, whether in the parental home or other situation. If the parents or a parent of the minor request, they or he or she shall be entitled to a hearing in juvenile court regarding designation of the parental home or other relative placement as the most appropriate living situation for the pregnant or parenting minor.

The department shall provide the parents or parent with the opportunity to make a showing that the parental home, or home of the other relative placement, is the most appropriate living situation. It shall be presumed in any administrative or judicial proceeding conducted under this subsection that the parental home or other relative placement requested by the parents or parent is the most appropriate living situation. This presumption is rebuttable.

(4) In cases in which the minor is unmarried and unemployed, the department shall, as part of the determination of the appropriate living situation, make an affirmative effort to provide current and positive information about adoption including referral to community-based organizations for counseling and provide information about the manner in which adoption works, its benefits for unmarried, unemployed minor parents and their children, and the meaning and availability of open adoption.

(5) For the purposes of this section, "most appropriate living situation" shall not include a living situation including an adult male who fathered the qualifying child and is found to meet the elements of rape of a child as set forth in RCW 9A.44.079. [1997 c 58 § 501; 1994 c 299 § 33.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Benefits for pregnant minors: RCW 74.04.0052.

Additional notes found at www.leg.wa.gov

74.12.260 Persons to whom grants shall be made—Proof of use for benefit of children. Temporary assistance for needy families grants shall be made to persons specified in RCW 74.12.010 as amended or such others as the federal department of health, education and welfare shall recognize for the sole purposes of giving benefits to the children whose needs are included in the grant paid to such persons. The recipient of each temporary assistance for needy families grant shall be and hereby is required to present reasonable proof to the department of social and health services as often as may be required by the department that all funds received in the form of a temporary assistance for needy families grant

for the children represented in the grant are being spent for the benefit of the children. [1997 c 59 § 21; 1979 c 141 § 351; 1963 c 228 § 22.]

74.12.280 Rules for coordination of services. The department is hereby authorized to adopt rules that will provide for coordination between the services provided pursuant to chapter 74.13 RCW and the services provided under the temporary assistance for needy families program in order to provide welfare and related services which will best promote the welfare of such children and their families and conform with the provisions of Public Law 87-543 (HR 10606). [1997 c 59 § 22; 1983 c 3 § 191; 1963 c 228 § 24.]

74.12.290 Suitability of home—Evaluation. The department of social and health services shall, during the initial and any subsequent determination of eligibility, evaluate the suitability of the home in which the dependent child lives, consideration to be given to physical care and supervision provided in the home; social, educational, and the moral atmosphere of the home as compared with the standards of the community; the child's physical and mental health and emotional security, special needs occasioned by the child's physical handicaps or illnesses, if any; the extent to which desirable factors outweigh the undesirable in the home; and the apparent possibility for improving undesirable conditions in the home. [1979 c 141 § 352; 1963 c 228 § 25.]

74.12.300 Grant during period required to eliminate undesirable conditions. If the home in which the child lives is found to be unsuitable, but there is reason to believe that elimination of the undesirable conditions can be effected, and the child is otherwise eligible for aid, a grant shall be initiated or continued for such time as the state department of social and health services and the family require to remedy the conditions. [1979 c 141 § 353; 1963 c 228 § 26.]

74.12.310 Placement of child with other relatives. When intensive efforts over a reasonable period have failed to improve the home conditions, the department shall determine if any other relatives specified by the social security act are maintaining a suitable home and are willing to take the care and custody of the child in their home. Upon an affirmative finding the department shall, if the parents or relatives with whom the child is living consent, take the necessary steps for placement of the child with such other relatives, but if the parents or relatives with whom the child lives refuse their consent to the placement then the department shall file a petition in the juvenile court for a decree adjudging the home unsuitable and placing the dependent child with such other relatives. [1963 c 228 § 27.]

74.12.320 Placement of child pursuant to chapter 13.04 RCW. If a diligent search reveals no other relatives as specified in the social security act maintaining a suitable home and willing to take custody of the child, then the department may file a petition in the appropriate juvenile court for placement of the child pursuant to the provisions of chapter 13.04 RCW. [1963 c 228 § 28.]

74.12.330 Assistance not to be denied for want of relative or court order. Notwithstanding the provisions of this chapter a child otherwise eligible for aid shall not be denied such assistance where a relative as specified in the social security act is unavailable or refuses to accept custody and the juvenile court fails to enter an order removing the child from the custody of the parent, relative or guardian then having custody. [1963 c 228 § 29.]

74.12.340 Day care. (1) The department is authorized to adopt rules governing the provision of day care as a part of child welfare services when the secretary determines that a need exists for such day care and that it is in the best interests of the child, the parents, or the custodial parent and in determining the need for such day care priority shall be given to geographical areas having the greatest need for such care and to members of low-income groups in the population. If the family is financially able to pay part or all of the costs of such care, fees shall be imposed and paid according to the financial ability of the family.

(2) This section does not affect the authority of the department of children, youth, and families to adopt rules governing child day care and early learning programs. [2018 c 58 § 7; 2006 c 265 § 208; 1973 1st ex.s. c 154 § 111; 1963 c 228 § 30.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

Child welfare services: Chapter 74.13 RCW.

Additional notes found at www.leg.wa.gov

74.12.350 Child's income set aside for future needs—Irrevocable trusts—Educational accounts. The department of social and health services is hereby authorized to promulgate rules and regulations in conformity with the provisions of Public Law 87-543 to allow all or any portion of a dependent child's earned or other income to be set aside for the identifiable future needs of the dependent child which will make possible the realization of the child's maximum potential as an independent and useful citizen.

The transfer into, or accumulation of, a child's income or resources in an irrevocable trust account is hereby allowed. The amount allowable is four thousand dollars. The department will provide income assistance recipients with clear and simple information on how to set up educational accounts, including how to assure that the accounts comply with federal law by being adequately earmarked for future educational use, and are irrevocable. [1994 c 299 § 31; 1979 c 141 § 354; 1963 c 226 § 1.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

74.12.361 Supplemental security income program—Enrollment of disabled persons. The department shall actively develop mechanisms for the income assistance program, the medical assistance program, and the community services administration to facilitate the enrollment in the federal supplemental security income program of disabled persons currently part of assistance units receiving temporary assistance for needy families benefits. [1997 c 59 § 23; 1994 c 299 § 35.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

74.12.400 Reduce reliance on aid—Work and job training—Family planning—Staff training. The department shall train financial services and social work staff who provide direct service to recipients of temporary assistance for needy families to:

(1) Effectively communicate the transitional nature of temporary assistance for needy families and the expectation that recipients will enter employment;

(2) Actively refer clients to the job opportunities and basic skills program;

(3) Provide social services needed to overcome obstacles to employability; and

(4) Provide family planning information and assistance, including alternatives to abortion, which shall be conducted in consultation with the department of health. [1997 c 59 § 24; 1994 c 299 § 2.]

Intent—1994 c 299: "The legislature finds that lengthy stays on welfare, lack of access to vocational education and training, the inadequate emphasis on employment by the social welfare system, and teen pregnancy are obstacles to achieving economic independence. Therefore, the legislature intends that:

(1) Income and employment assistance programs emphasize the temporary nature of welfare and set goals of responsibility, work, and independence;

(2) State institutions take an active role in preventing pregnancy in young teens;

(3) Family planning assistance be readily available to welfare recipients;

(4) Support enforcement be more effective and the level of responsibility of noncustodial parents be significantly increased; and

(5) Job search, job skills training, and vocational education resources are to be used in the most cost-effective manner possible." [1994 c 299 § 1.]

Finding—1994 c 299: "The legislature finds that the reliable receipt of child support payments by custodial parents is essential to maintaining economic self-sufficiency. It is the intent of the legislature to ensure that child support payments received by custodial parents when such support is owed are retained by those parents regardless of future claims made against such payments." [1994 c 299 § 17.]

Additional notes found at www.leg.wa.gov

74.12.410 Family planning information—Cooperation with the superintendent of public instruction. (1) At the time of application or reassessment under this chapter the department shall offer or contract for family planning information and assistance, including alternatives to abortion, and any other available locally based unintended pregnancy prevention programs, to prospective and current recipients of temporary assistance for needy families.

(2) The department shall work in cooperation with the superintendent of public instruction to reduce the rate of abortions and unintended pregnancies in Washington state. [2009 c 303 § 2; 1997 c 58 § 601; 1994 c 299 § 3.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Additional notes found at www.leg.wa.gov

74.12.450 Application for assistance—Report on suspected child abuse or neglect—Notice to parent about application, location of child, and family reconciliation act. (1) Whenever the department receives an application for assistance on behalf of a child under this chapter and an employee of the department has reason to believe that the child has suffered abuse or neglect, the employee shall cause a report to be made as provided under chapter 26.44 RCW.

(2) Whenever the department approves an application for assistance on behalf of a child under this chapter, the department shall make a reasonable effort to determine whether the child is living with a parent of the child. Whenever the child is living in the home of a relative other than a parent of the child, the department shall make reasonable efforts to notify the parent with whom the child has most recently resided that an application for assistance on behalf of the child has been approved by the department and shall advise the parent of his or her rights under this section, RCW 74.12.460, and *sections 4 and 5 of this act, unless good cause exists not to do so based on a substantiated claim that the parent has abused or neglected the child.

(3) Upon written request of the parent, the department shall notify the parent of the address and location of the child, unless there is a current investigation or pending case involving abuse or neglect by the parent under chapter 13.34 RCW.

(4) The department shall notify and advise the parent of the provisions of the family reconciliation act under chapter 13.32A RCW. [1995 c 401 § 2.]

***Reviser's note:** Sections 4 and 5 of this act were vetoed by the governor.

Additional notes found at www.leg.wa.gov

74.12.460 Notice to parent—Required within seven days of approval of application. The department shall make reasonable efforts to notify the parent under RCW 74.12.450(2) as soon as reasonably possible, but no later than seven days after approval of the application by the department. [1995 c 401 § 3.]

Additional notes found at www.leg.wa.gov

74.12.900 Welfare reform implementation—1994 c 299. The revisions to the temporary assistance for needy families program and job opportunities and basic skills training program shall be implemented by the department of social and health services on a statewide basis. [1997 c 59 § 28; 1994 c 299 § 12.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Chapter 74.12A RCW
INCENTIVE TO WORK—ECONOMIC INDEPENDENCE

Sections

74.12A.020 Job support services—Grants to community action agencies or nonprofit organizations. The department shall provide grants to community action agencies or other local nonprofit organizations to provide job opportunities and basic skills training program participants with transitional support services, one-to-one assistance, case management, and job retention services. [1997 c 58 § 327; 1993 c 312 § 8.]

Findings—Intent—1993 c 312: "The legislature finds that:

(1) Public assistance is intended to be a temporary financial relief program, recognizing that families can be confronted with a financial crisis at any time in life. Successful public assistance programs depend on the availability of adequate resources to assist individuals deemed eligible for the benefits of such a program. In this way, eligible families are given sufficient assistance to reenter productive employment in a minimal time period.

(2) The current public assistance system requires a reduction in grant standards when income is received. In most cases, family income is limited to levels substantially below the standard of need. This is a strong disincentive to work. To remove this disincentive, the legislature intends to allow families to retain a greater percentage of income before it results in the reduction or termination of benefits;

(3) Employment, training, and education services provided to employable recipients of public assistance are effective tools in achieving economic self-sufficiency. Support services that are targeted to the specific needs of the individual offer the best hope of achieving economic self-sufficiency in a cost-effective manner;

(4) State welfare-to-work programs, which move individuals from dependence to economic independence, must be operated cooperatively and collaboratively between state agencies and programs. They also must include public assistance recipients as active partners in self-sufficiency planning activities. Participants in economic independence programs and services will benefit from the concepts of personal empowerment, self-motivation, and self-esteem;

(5) Many barriers to economic independence are found in federal statutes and rules, and provide states with limited options for restructuring existing programs in order to create incentives for employment over continued dependence;

(6) The legislature finds that the personal and societal costs of teenage childbearing are substantial. Teen parents are less likely to finish high school and more likely to depend upon public assistance than women who delay childbearing until adulthood; and

(7) The legislature intends that an effort be made to ensure that each teenage parent who is a public assistance recipient live in a setting that increases the likelihood that the teen parent will complete high school and achieve economic independence." [1993 c 312 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 74.13 RCW
CHILD WELFARE SERVICES

Sections

ADOPTION SUPPORT DEMONSTRATION ACT OF 1971

FOSTER CARE

Consistency required in administration of statutes applicable to runaway youth, at-risk youth, and families in conflict: RCW 43.20A.770.

74.13.010 Declaration of purpose. The purpose of this chapter is to safeguard, protect, and contribute to the welfare of the children of the state, through a comprehensive and coordinated program of child welfare services provided by both the department and agencies providing for: Social services and facilities for children who require guidance, care, control, protection, treatment, or rehabilitation; setting of standards for social services and facilities for children; cooperation with public and voluntary agencies, organizations, and citizen groups in the development and coordination of programs and activities in behalf of children; and promotion of community conditions and resources that help parents to discharge their responsibilities for the care, development, and well-being of their children. [2018 c 284 § 34; 2009 c 520 § 49; 1965 c 30 § 2.]

74.13.013 Finding—Accreditation of children's services. The legislature finds that accreditation of children's services by an independent entity can significantly improve the quality of services provided to children and families. Accreditation involves an ongoing commitment to meeting nationally recognized standards of practice in child welfare and holds organizations accountable for achieving improved outcomes for children.

Accreditation is a structured process designed to facilitate organizational change and improvement within individual local offices. Standards require improved case management, documentation, internal case management practices, and accountability. Accreditation requires the establishment of clear communication with biological parents, foster and adoptive parents, providers, the courts, and members of the community. [2001 c 265 § 1.]

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

(1) "Case management" means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.

(5) "Child who is a candidate for foster care" means a child who the department identifies as being at imminent risk of entering foster care but who can remain safely in the child's home or in a kinship placement as long as services or programs that are necessary to prevent entry of the child into foster care are provided, and includes but is not limited to a child whose adoption or guardianship arrangement is at risk of a disruption or dissolution that would result in a foster care placement. The term includes a child for whom there is reasonable cause to believe that any of the following circumstances exist:

(a) The child has been abandoned by the parent as defined in RCW 13.34.030 and the child's health, safety, and welfare is seriously endangered as a result;

(b) The child has been abused or neglected as defined in chapter 26.44 RCW and the child's health, safety, and welfare is seriously endangered as a result;

(c) There is no parent capable of meeting the child's needs such that the child is in circumstances that constitute a serious danger to the child's development;

(d) The child is otherwise at imminent risk of harm.

(6) "Department" means the department of children, youth, and families.

(7) "Extended foster care services" means residential and other support services the department is authorized to provide to dependent children. These services include, but are not limited to, placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(8) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(9) "Medical condition" means, for the purposes of qualifying for extended foster care services, a physical or mental health condition as documented by any licensed health care provider regulated by a disciplining authority under RCW 18.130.040.

(10) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

(11) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

(12) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include provisions that link the performance of the contractor to the level and timing of reimbursement.

(13) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

(14) "Prevention and family services and programs" means specific mental health prevention and treatment services, substance abuse prevention and treatment services, and in-home parent skill-based programs that qualify for federal funding under the federal family first prevention services act, P.L. 115-123. For purposes of this chapter, prevention and family services and programs are not remedial services or family reunification services as described in RCW 13.34.025(2).

(15) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(16) "Secretary" means the secretary of the department.

(17) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the department or the court.

(18) "Unsupervised" has the same meaning as in RCW 43.43.830.

(19) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program. [2019 c 172 § 7. Prior: 2018 c 284 § 36; (2018 c 284 § 35 expired July 1, 2018); 2018 c 58 § 51; 2018 c 34 § 3; 2017 3rd sp.s. c 6 § 401; 2015 c 240 § 2; prior: 2013 c 332 § 8; (2013 c 332 § 7 expired December 1, 2013); 2013 c 162 § 5; (2013 c 162 § 4 expired December 1, 2013); prior: 2012 c 259 § 7; 2012 c 205 § 12; prior: 2011 c 330 § 4; 2010 c 291 § 3; prior: 2009 c 520 § 2; 2009 c 235 § 3; 1999 c 267 § 7; 1979 c 155 § 76; 1977 ex.s. c 291 § 21; 1975-'76 2nd ex.s. c 71 § 3; 1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

Effective date—2018 c 284 §§ 3, 8, 13, 20, 33, 36, and 67: See note following RCW 13.34.030.

Expiration date—2018 c 284 §§ 2, 7, 12, 19, 32, 35, and 66: See note following RCW 13.34.030.

Effective date—2018 c 58: See note following RCW 28A.655.080.

Effective date—2018 c 34: See note following RCW 13.34.267.

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—2015 c 240: See note following RCW 13.34.267.

Effective date—2013 c 332 §§ 8 and 10: "Sections 8 and 10 of this act take effect December 1, 2013." [2013 c 332 § 17.]

Expiration date—2013 c 332 §§ 7 and 9: "Sections 7 and 9 of this act expire December 1, 2013." [2013 c 332 § 16.]

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Effective date—2013 c 162 § 5: "Section 5 of this act takes effect December 1, 2013." [2013 c 162 § 10.]

Expiration date—2013 c 162 § 4: "Section 4 of this act expires December 1, 2013." [2013 c 162 § 9.]

Findings—Rules—2013 c 162: See notes following RCW 74.13.700.

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—2010 c 291: "The legislature finds that, based upon the work of the child welfare transformation design committee established pursuant to 2SHB 2106 during the 2009 legislative session, several narrowly based amendments to that legislation need to be made, mainly for clarifying purposes. The legislature further finds that two deadlines need to be extended by six months, the first to allow the department of social and health services additional time to complete the conversion of its contracts to performance-based contracts and the second to allow the department additional time to gradually transfer existing cases to supervising agencies in the demonstration sites. The legislature finds that the addition of a foster youth on the child welfare transformation design committee will greatly assist the committee in its work.

The legislature recognizes that clarifying language regarding Indian tribes should be added regarding the government-to-government relationship the tribes have with the state. The legislature further recognizes that language is needed regarding the department's ability to receive federal funding based upon the recommendations made by the child welfare transformation design committee." [2010 c 291 § 1.]

Findings—Intent—2009 c 235: See note following RCW 74.13.031.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Additional notes found at www.leg.wa.gov

74.13.021 Developmentally disabled child—Defined. As used in this chapter, "developmentally disabled child" is a child who has a developmental disability as defined in RCW 71A.10.020 and whose parent, guardian, or legal custodian and with the department mutually agree that services appropriate to the child's needs cannot be provided in the home. [1998 c 229 § 3; 1997 c 386 § 15.]

74.13.025 Counties may administer and provide services under RCW 13.32A.197—Plan for at-risk youth required. Any county or group of counties may make application to the department in the manner and form prescribed by the department to administer and provide the services established under RCW 13.32A.197. Any such application must include a plan or plans for providing such services to at-risk youth. [2017 3rd sp.s. c 6 § 402; 1998 c 296 § 1.]

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.

Findings—Intent—1998 c 296: "The legislature finds it is often necessary for parents to obtain mental health or chemical dependency treatment for their minor children prior to the time the child's condition presents a likelihood of serious harm or the child becomes gravely disabled. The legislature finds that treatment of such conditions is not the equivalent of incarceration or detention, but is a legitimate act of parental discretion, when supported by decisions of credentialed professionals. The legislature finds that, consistent with *Parham v. J.R.*, 442 U.S. 584 (1979), state action is not involved in the determination of a parent and professional person to admit a minor child to treatment and finds this act provides sufficient independent review by the department of social and health services, as a neutral fact finder, to protect the interests of all parties. The legislature intends and recognizes that children affected by the provisions of this act are not children whose mental or substance abuse problems are adequately addressed by chapters *70.96A and 71.34 RCW. Therefore, the legislature finds it is necessary to provide parents a statutory process, other than the petition process provided in chapters *70.96A and 71.34 RCW, to obtain treatment for their minor children without the consent of the children.

The legislature finds that differing standards of admission and review in parent-initiated mental health and chemical dependency treatment for their minor children are necessary and the admission standards and procedures under state involuntary treatment procedures are not adequate to provide safeguards for the safety and well-being of all children. The legislature finds the timeline for admission and reviews under existing law do not provide sufficient opportunities for assessment of the mental health and chemically dependent status of every minor child and that additional time and different standards will facilitate the likelihood of successful treatment of children who are in need of assistance but unwilling to obtain it voluntarily. The legislature finds there are children whose behavior presents a clear need of medical treatment but is not so extreme as to require immediate state intervention under the state involuntary treatment procedures." [1998 c 296 § 6.]

***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.

Additional notes found at www.leg.wa.gov

74.13.029 Dependency established—Social worker's duty to provide document containing information. Once a dependency is established under chapter 13.34 RCW, the department employee assigned to the case shall provide the dependent child age twelve years and older with a document containing the information described in RCW 74.13.031(18). The department employee shall explain the contents of the document to the child and direct the child to the department's web site for further information. The department employee shall document, in the electronic data system, that this requirement was met. [2019 c 64 § 25; 2011 c 89 § 17; 2009 c 491 § 8.]

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

74.13.031 Duties of department—Child welfare services—Children's services advisory committee. (1) The department shall develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, the department shall recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and the department shall annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) As provided in *RCW 26.44.030(11), the department may respond to a report of child abuse or neglect by using the family assessment response.

(5) The department shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(6) The department shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. Under this section children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month. The department shall randomly select no less than ten percent of the caregivers currently providing care to receive one unannounced face-to-face visit in the caregiver's home per year. No caregiver will receive an unannounced visit through the random selection process for two consecutive years. If the caseworker makes a good faith effort to conduct the unannounced visit to a caregiver and is unable to do so, that month's visit to that caregiver need not be unannounced. The department is encouraged to group monthly visits to caregivers by geographic area so that in the event an unannounced visit cannot be completed, the caseworker may complete other required monthly visits. The department shall use a method of random selection that does not cause a fiscal impact to the department.

The department shall conduct the monthly visits with children and caregivers to whom it is providing child welfare services.

(7) The department shall have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which

receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(8) The department shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(9) The department shall have authority to purchase care for children.

(10) The department shall establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(11)(a) The department shall provide continued extended foster care services to nonminor dependents who are:

(i) Enrolled in a secondary education program or a secondary education equivalency program;

(ii) Enrolled and participating in a postsecondary academic or postsecondary vocational education program;

(iii) Participating in a program or activity designed to promote employment or remove barriers to employment;

(iv) Engaged in employment for eighty hours or more per month; or

(v) Not able to engage in any of the activities described in (a)(i) through (iv) of this subsection due to a documented medical condition.

(b) To be eligible for extended foster care services, the nonminor dependent must have been dependent at the time that he or she reached age eighteen years. If the dependency case of the nonminor dependent was dismissed pursuant to RCW 13.34.267, he or she may receive extended foster care services pursuant to a voluntary placement agreement under RCW 74.13.336 or pursuant to an order of dependency issued by the court under RCW 13.34.268. A nonminor dependent whose dependency case was dismissed by the court may request extended foster care services before reaching age twenty-one years. Eligible nonminor dependents may unenroll and reenroll in extended foster care through a voluntary placement agreement an unlimited number of times between ages eighteen and twenty-one.

(c) The department shall develop and implement rules regarding youth eligibility requirements.

(d) The department shall make efforts to ensure that extended foster care services maximize medicaid reimbursements. This must include the department ensuring that health and mental health extended foster care providers participate in medicaid, unless the condition of the extended foster care youth requires specialty care that is not available among participating medicaid providers or there are no participating medicaid providers in the area. The department shall coordinate other services to maximize federal resources and the most cost-efficient delivery of services to extended foster care youth.

(e) The department shall allow a youth who has received extended foster care services, but lost his or her eligibility, to reenter the extended foster care program an unlimited number of times through a voluntary placement agreement when he or she meets the eligibility criteria again.

(12) The department shall have authority to provide adoption support benefits, or relative guardianship subsidies on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a relative guardianship at age sixteen or older and who meet the criteria described in subsection (11) of this section.

(13) The department shall refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(14) The department shall have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order. The purchase of such care is exempt from the requirements of chapter 74.13B RCW and may be purchased from the federally recognized Indian tribe or tribally licensed child-placing agency, and shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200, 43.185C.295, 74.13.035, and 74.13.036, or of this section all services to be provided by the department under subsections (4), (7), and (8) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(15) Within amounts appropriated for this specific purpose, the department shall provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(16) The department shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-three years of age, who are or have been in the department's care and custody, or who are or were nonminor dependents.

(17) The department shall consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department is performing the duties and meeting the obligations specified in this section and RCW 74.13.250 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

(18)(a) The department shall, within current funding levels, place on its public web site a document listing the duties and responsibilities the department has to a child subject to a dependency petition including, but not limited to, the following:

(i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;

(ii) Sibling visits subject to the restrictions in RCW 13.34.136(2)(b)(ii);

(iii) Parent-child visits;

(iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and

(v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.

(b) The document must be prepared in conjunction with a community-based organization and must be updated as needed.

(19)(a) The department shall have the authority to purchase legal representation for parents or kinship caregivers, or both, of children who are at risk of being dependent, or who are dependent, to establish or modify a parenting plan under RCW 13.34.155 or chapter 26.09, 26.26A, or 26.26B RCW or secure orders establishing other relevant civil legal relationships authorized by law, when it is necessary for the child's safety, permanence, or well-being. The department's purchase of legal representation for kinship caregivers must be within the department's appropriations. This subsection does not create an entitlement to legal representation purchased by the department and does not create judicial authority to order the department to purchase legal representation for a parent or kinship caregiver. Such determinations are solely within the department's discretion. The term "kinship caregiver" as used in this section means a caregiver who meets the definition of "kin" in RCW 74.13.600(1), unless the child is an Indian child as defined in RCW 13.38.040 and 25 U.S.C. Sec. 1903. For an Indian child as defined in RCW 13.38.040 and 25 U.S.C. Sec. 1903, the term "kinship caregiver" as used in this section means a caregiver who is an "extended family member" as defined in RCW 13.38.040(8).

(b) The department is encouraged to work with the office of public defense parent representation program and the office of civil legal aid to develop a cost-effective system for providing effective civil legal representation for parents and kinship caregivers if it exercises its authority under this subsection. [2019 c 172 § 8; 2019 c 46 § 5045. Prior: 2018 c 284 § 37; 2018 c 80 § 1; 2018 c 34 § 5; prior: 2017 3rd sp.s. c 20 § 7; 2017 c 265 § 2; 2015 c 240 § 3; 2014 c 122 § 2; prior: 2013 c 332 § 10; (2013 c 332 § 9 expired December 1, 2013); 2013 c 32 § 2; (2013 c 32 § 1 expired December 1, 2013); prior: 2012 c 259 § 8; 2012 c 52 § 2; prior: 2011 c 330 § 5; 2011 c 160 § 2; prior: 2009 c 520 § 51; 2009 c 491 § 7; (2009 c 235 § 4 expired October 1, 2010); 2009 c 235 § 2; 2008 c 267 § 6; 2007 c 413 § 10; prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Reviser's note: *(1) RCW 26.44.030 was amended by 2019 c 172 § 6, changing subsection (11) to subsection (12).

(2) This section was amended by 2019 c 46 § 5045 and by 2019 c 172 § 8, 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—2018 c 34: See note following RCW 13.34.267.

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

Finding—Intent—2017 c 265: "The legislature finds that a large number of foster youth experience homelessness. The legislature intends that individuals who are eligible for extended foster care services are able to receive those services to help prevent them from experiencing homelessness. The 2016 office of homeless youth annual report identifies ensuring that youth exiting public systems are not released into homelessness as a goal and recommends expanding options for youth to enroll in extended foster care." [2017 c 265 § 1.]

Effective date—2015 c 240: See note following RCW 13.34.267.

Effective date—2014 c 122: See note following RCW 13.34.267.

Effective date—2013 c 332 §§ 8 and 10: See note following RCW 74.13.020.

Expiration date—2013 c 332 §§ 7 and 9: See note following RCW 74.13.020.

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Effective date—2013 c 32 § 2: "Section 2 of this act takes effect December 1, 2013." [2013 c 32 § 3.]

Expiration date—2013 c 32 § 1: "Section 1 of this act expires December 1, 2013." [2013 c 32 § 4.]

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

Intent—2012 c 52: "Since 2006, under a program known as "foster care to 21," the Washington state legislature has provided services to young adults transitioning out of foster care in order for them to enroll in and complete their postsecondary educations. In 2008, the United States congress passed the fostering connections to success and increasing adoptions act of 2008, which allows states to receive a federal match for state dollars expended in supporting youth transitioning out of foster care. In 2011, the Washington state legislature opted to create the "extended foster care program," in order to receive the federal match for youth completing high school. It is the intent of this act to enable the state to receive the federal match to offset costs expended on supporting youth seeking postsecondary education. This act would result in these youth being served under the extended foster care program, for which there is a federal match, instead of the foster care to 21 program, which relies solely on state dollars. It is the intent of the legislature to allow all youth currently enrolled in the foster care to 21 program for the purposes of postsecondary education to remain enrolled until they turn twenty-one, are no longer otherwise eligible, or choose to leave the program. Within three years of June 7, 2012, the "foster care to 21" program will cease to operate, and youth seeking a postsecondary education will be solely served by the extended foster care program." [2012 c 52 § 1.]

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—2011 c 160: "The legislature finds that foster parents are a critical piece of the dependency system. The legislature further finds that the majority of foster parents provide excellent care to children in the dependency system, many of whom have suffered serious damage in their families of origin. It is the legislature's belief that through the selfless dedication of many foster parents that abused and neglected children are able to heal and go on to lead productive lives. The legislature also believes that some foster parents act in ways that are damaging to the children in their care and it is the department of social and health services' responsibility to make sure all children in care are safe. The legislature finds that unannounced visits to caregivers' homes is another method by which the department of social and health services can make sure the children in foster care are safe." [2011 c 160 § 1.]

Effective date—2009 c 235 § 2: "Section 2 of this act takes effect October 1, 2010." [2009 c 235 § 7.]

Expiration date—2009 c 235 § 4: "Section 4 of this act expires October 1, 2010." [2009 c 235 § 8.]

Findings—Intent—2009 c 235: "(1) The legislature finds that the federal fostering connections to success and increasing adoptions act of 2008 provides important new opportunities for the state to use federal funding to promote permanency and positive outcomes for youth in foster care and for those who age out of the foster care system.

(2) The legislature also finds that research regarding former foster youth is generally sobering. Longitudinal research on the adult functioning of former foster youth indicates a disproportionate likelihood that youth aging out

of foster care and those who spent several years in care will experience poor outcomes in a variety of areas, including limited human capital upon which to build economic security; untreated mental or behavioral health problems; involvement in the criminal justice and corrections systems; and early parenthood combined with second-generation child welfare involvement. The legislature further finds that research also demonstrates that access to adequate and appropriate supports during the period of transition from foster care to independence can have significant positive impacts on adult functioning and can improve outcomes relating to educational attainment and postsecondary enrollment; employment and earnings; and reduced rates of teen pregnancies.

(3) The legislature intends to clarify existing authority for foster care services beyond age eighteen and to establish authority for future expansion of housing and other supports for youth aging out of foster care and youth who achieved permanency in later adolescence." [2009 c 235 § 1.]

Finding—2006 c 221: See note following RCW 13.34.315.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Declaration of purpose—1967 c 172: See RCW 74.15.010.

Abuse of child: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and individuals with developmental disabilities: Chapter 74.15 RCW.

Additional notes found at www.leg.wa.gov

74.13.0311 Services provided under deferred prosecution order. The department may provide child welfare services pursuant to a deferred prosecution plan ordered under chapter 10.05 RCW. Child welfare services provided under this chapter pursuant to a deferred prosecution order may not be construed to prohibit the department from providing services or undertaking proceedings pursuant to chapter 13.34 or 26.44 RCW. [2018 c 284 § 38; 2009 c 520 § 52; 2002 c 219 § 13.]

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

74.13.035 Crisis residential centers—Annual records, contents—Multiple licensing. Crisis residential centers shall compile yearly records which shall be transmitted to the department and which shall contain information regarding population profiles of the children admitted to the centers during each past calendar year. Such information shall include but shall not be limited to the following:

(1) The number, age, and sex of children admitted to custody;

(2) Who brought the children to the center;

(3) Services provided to children admitted to the center;

(4) The circumstances which necessitated the children being brought to the center;

(5) The ultimate disposition of cases;

(6) The number of children admitted to custody who ran away from the center and their ultimate disposition, if any;

(7) Length of stay.

The department may require the provision of additional information and may require each center to provide all such necessary information in a uniform manner.

A center may, in addition to being licensed as such, also be licensed as a family foster home or group care facility and may house on the premises juveniles assigned for foster or group care. [1979 c 155 § 81.]

Additional notes found at www.leg.wa.gov

74.13.036 Implementation of chapters 13.32A and 13.34 RCW. (1) The department shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effectively carry out these chapters. The department shall work with all such entities to ensure that chapters 13.32A and 13.34 RCW are implemented in a uniform manner throughout the state.

(2) The department shall develop a plan and procedures, in cooperation with the statewide advisory committee, to insure the full implementation of the provisions of chapter 13.32A RCW. Such plan and procedures shall include but are not limited to:

(a) Procedures defining and delineating the role of the department and juvenile court with regard to the execution of the child in need of services placement process;

(b) Procedures for designating department staff responsible for family reconciliation services;

(c) Procedures assuring enforcement of contempt proceedings in accordance with RCW 13.32A.170 and 13.32A.250; and

(d) Procedures for the continued education of all individuals in the criminal juvenile justice and child care systems who are affected by chapter 13.32A RCW, as well as members of the legislative and executive branches of government.

There shall be uniform application of the procedures developed by the department and juvenile court personnel, to the extent practicable. Local and regional differences shall be taken into consideration in the development of procedures required under this subsection.

(3) In addition to its other oversight duties, the department shall:

(a) Identify and evaluate resource needs in each region of the state;

(b) Disseminate information collected as part of the oversight process to affected groups and the general public;

(c) Educate affected entities within the juvenile justice and child care systems, local government, and the legislative branch regarding the implementation of chapters 13.32A and 13.34 RCW;

(d) Review complaints concerning the services, policies, and procedures of those entities charged with implementing chapters 13.32A and 13.34 RCW; and

(e) Report any violations and misunderstandings regarding the implementation of chapters 13.32A and 13.34 RCW. [2018 c 284 § 39. Prior: 2009 c 520 § 54; 2009 c 518 § 5; 2003 c 207 § 2; 1996 c 133 § 37; 1995 c 312 § 65; 1989 c 175 § 147; 1987 c 505 § 70; 1985 c 257 § 11; 1981 c 298 § 18; 1979 c 155 § 82.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

74.13.037 Transitional living programs for youth in the process of being emancipated—Rules. Within available funds appropriated for this purpose, the department shall establish, through performance-based contracts with private vendors, transitional living programs for youth who are being assisted by the department in being emancipated as part of their permanency plan under chapter 13.34 RCW. These programs shall be licensed under rules adopted by the department. [2009 c 520 § 55; 1997 c 146 § 9; 1996 c 133 § 39.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

74.13.039 Runaway hotline. The department shall maintain a toll-free hotline to assist parents of runaway children. The hotline shall provide parents with a complete description of their rights when dealing with their runaway child. [2017 3rd sp.s. c 6 § 403; 1994 sp.s. c 7 § 501.]

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.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

74.13.042 Petition for order compelling disclosure of record or information. If the department is denied lawful access to records or information, or requested records or information is not provided in a timely manner, the department may petition the court for an order compelling disclosure.

(1) The petition shall be filed in the juvenile court for the county in which the record or information is located or the county in which the person who is the subject of the record or information resides. If the person who is the subject of the record or information is a party to or the subject of a pending proceeding under chapter 13.32A or 13.34 RCW, the petition shall be filed in such proceeding.

(2) Except as otherwise provided in this section, the persons from whom and about whom the record or information is sought shall be served with a summons and a petition at least seven calendar days prior to a hearing on the petition. The court may order disclosure upon ex parte application of the department, without prior notice to any person, if the court finds there is reason to believe access to the record or information is necessary to determine whether the child is in imminent danger and in need of immediate protection.

(3) The court shall grant the petition upon a showing that there is reason to believe that the record or information sought is necessary for the health, safety, or welfare of the child who is currently receiving child welfare services. [2018 c 284 § 40; 2009 c 520 § 56; 1995 c 311 § 14.]

74.13.045 Complaint resolution process. The department shall develop and implement an informal, nonadversarial complaint resolution process to be used by clients of the department, foster parents, and other affected individuals who have complaints regarding a department policy or procedure, the application of such a policy or procedure, or the performance of an entity that has entered into a performance-based contract with the department, related to programs administered under this chapter. The process shall not apply in circumstances where the complainant has the right under Title 13, 26, or 74 RCW to seek resolution of the complaint through judicial review or through an adjudicative proceeding.

Nothing in this section shall be construed to create substantive or procedural rights in any person. Participation in the complaint resolution process shall not entitle any person to an adjudicative proceeding under chapter 34.05 RCW or to superior court review. Participation in the process shall not affect the right of any person to seek other statutorily or constitutionally permitted remedies.

The department shall develop procedures to assure that clients and foster parents are informed of the availability of the complaint resolution process and how to access it. The department shall incorporate information regarding the complaint resolution process into the training for foster parents and department caseworkers.

The department shall compile complaint resolution data including the nature of the complaint and the outcome of the process. [2018 c 284 § 41; 2009 c 520 § 57; 1998 c 245 § 146; 1991 c 340 § 2.]

Intent—1991 c 340: "It is the intent of the legislature to provide timely, thorough, and fair procedures for resolution of grievances of clients, foster parents, and the community resulting from decisions made by the department of social and health services related to programs administered pursuant to this chapter. Grievances should be resolved at the lowest level possible. However, all levels of the department should be accountable and responsible to individuals who are experiencing difficulties with agency services or decisions. It is the intent of the legislature that grievance procedures be made available to individuals who do not have other remedies available through judicial review or adjudicative proceedings." [1991 c 340 § 1.]

74.13.055 Foster care—Length of stay. The department shall adopt rules pursuant to chapter 34.05 RCW which establish goals as to the maximum number of children who will remain in foster care for a period of longer than twenty-four months. [2018 c 284 § 42; 2009 c 520 § 58; 1998 c 245 § 147; 1982 c 118 § 1.]

74.13.060 Secretary as custodian of funds of person placed with department or its agent—Authority—Limitations—Termination. (1) The secretary or his or her designees or delegatees shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department or an entity with which it has entered into a performance-based contract pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:

(a) For such personal needs of such person as the secretary may deem proper and necessary.

(b) Against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid.

(2) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures therefrom to be accurately accounted for by him or her on an individual basis. Whenever, the funds belonging to any one person exceed the sum of five hundred dollars, the secretary may deposit said funds in a savings and loan association account on behalf of that particular person.

(3) When the conditions of placement no longer exist and public assistance is no longer being provided for such person, upon a showing of legal competency and proper authority, the secretary shall deliver to such person, or the parent, person, or agency legally responsible for such person,

all funds belonging to the person remaining in his or her possession as custodian, together with a full and final accounting of all receipts and expenditures made therefrom.

(4) The appointment of a guardian for the estate of such person shall terminate the secretary's authority as custodian of said funds upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to such guardian any funds of such person remaining in the secretary's possession together with full and final accounting of all receipts and expenditures made therefrom. [2009 c 520 § 59; 1971 ex.s. c 169 § 7.]

74.13.062 Eligible relatives appointed as guardians—Receipt and expenditure of federal funds—Implementation of subsidy program—Department to adopt rules—Relative guardianship subsidy agreements. (1) The department shall adopt rules consistent with federal regulations for the receipt and expenditure of federal funds and implement a subsidy program for eligible relatives appointed by the court as a guardian under RCW 13.36.050.

(2) For the purpose of licensing a relative seeking to be appointed as a guardian and eligible for a guardianship subsidy under this section, the department shall, on a case-by-case basis, and when determined to be in the best interests of the child:

(a) Waive nonsafety licensing standards; and

(b) Apply the list of disqualifying crimes in the adoption and safe families act, unless doing so would compromise the child's safety, or would adversely affect the state's ability to continue to obtain federal funding for child welfare related functions.

(3) Relative guardianship subsidy agreements shall be designed to promote long-term permanency for the child, and may include provisions for periodic review of the subsidy amount and the needs of the child. [2017 3rd sp.s. c 6 § 404; 2010 c 272 § 12.]

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.

74.13.065 Out-of-home care—Social study required. (1) The department shall conduct a social study whenever a child is placed in out-of-home care under the supervision of the department. The study shall be conducted prior to placement, or, if it is not feasible to conduct the study prior to placement due to the circumstances of the case, the study shall be conducted as soon as possible following placement.

(2) The social study shall include, but not be limited to, an assessment of the following factors:

(a) The physical and emotional strengths and needs of the child;

(b) Emotional bonds with siblings and the need to maintain regular sibling contacts;

(c) The proximity of the child's placement to the child's family to aid reunification;

(d) The possibility of placement with the child's relatives or extended family;

(e) The racial, ethnic, cultural, and religious background of the child;

(f) The least-restrictive, most family-like placement reasonably available and capable of meeting the child's needs; and

(g) Compliance with RCW 13.34.260 regarding parental preferences for placement of their children. [2018 c 284 § 43; 2009 c 520 § 60; 2002 c 52 § 8; 1995 c 311 § 26.]

Intent—2002 c 52: See note following RCW 13.34.025.

74.13.070 Moneys in possession of secretary not subject to certain proceedings. None of the moneys or other funds which come into the possession of the secretary under chapter 169, Laws of 1971 ex. sess. shall be subject to execution, levy, attachment, garnishment or other legal process or other operation of any bankruptcy or insolvency law. [1971 ex.s. c 169 § 8.]

74.13.075 Sexually aggressive youth—Defined—Services—Expenditure of treatment funds—Tribal jurisdiction—Information sharing and confidentiality. (1) For the purposes of funds appropriated for the treatment of sexually aggressive youth, the term "sexually aggressive youth" means those juveniles who:

(a) Have been abused and have committed a sexually aggressive act or other violent act that is sexual in nature; and

(i) Are in the care and custody of the state or a federally recognized Indian tribe located within the state; or

(ii) Are the subject of a proceeding under chapter 13.34 RCW or a child welfare proceeding held before a tribal court located within the state; or

(b) Cannot be detained under the juvenile justice system due to being under age twelve and incompetent to stand trial for acts that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if the juvenile was over twelve years of age, or competent to stand trial if under twelve years of age.

(2) The department may offer appropriate available services and treatment to a sexually aggressive youth and his or her parents or legal guardians as provided in this section and may refer the child and his or her parents to appropriate treatment and services available within the community, regardless of whether the child is the subject of a proceeding under chapter 13.34 RCW.

(3) In expending these funds, the department shall establish in each region a case review committee to review all cases for which the funds are used. In determining whether to use these funds in a particular case, the committee shall consider:

(a) The age of the juvenile;

(b) The extent and type of abuse to which the juvenile has been subjected;

(c) The juvenile's past conduct;

(d) The benefits that can be expected from the treatment;

(e) The cost of the treatment; and

(f) The ability of the juvenile's parent or guardian to pay for the treatment.

(4) The department may provide funds, under this section, for youth in the care and custody of a tribe or through a tribal court, for the treatment of sexually aggressive youth only if: (a) The tribe uses the same or equivalent definitions and standards for determining which youth are sexually

aggressive; and (b) the department seeks to recover any federal funds available for the treatment of youth.

(5) A juvenile's status as a sexually aggressive youth, and any protective plan, services, and treatment plans and progress reports provided with these funds are confidential and not subject to public disclosure by the department. This information shall be shared with relevant juvenile care agencies, law enforcement agencies, and schools, but remains confidential and not subject to public disclosure by those agencies. [2009 c 520 § 61; 2009 c 250 § 2; 1994 c 169 § 1. Prior: 1993 c 402 § 3; 1993 c 146 § 1; 1990 c 3 § 305.]

Reviser's note: This section was amended by 2009 c 250 § 2 and by 2009 c 520 § 61, 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).

Finding—2009 c 250: "The legislature finds that children who commit sexually aggressive acts are at risk of repeating such behavior if they and their families do not receive treatment and counseling. This is especially true of children under the age of twelve who are referred to the department of social and health services by a prosecuting attorney pursuant to RCW 26.44.160. To reduce the number of future victims of sexual abuse and to reduce recidivism of children who commit sexually aggressive acts the legislature finds that all such children and their families, including children who are referred by prosecutors pursuant to RCW 26.44.160, be eligible for treatment regardless of whether they are the subject of a proceeding under chapter 13.34 RCW." [2009 c 250 § 1.]

Additional notes found at www.leg.wa.gov

74.13.077 Sexually aggressive youth—Transfer of surplus funds for treatment. The secretary is authorized to transfer surplus, unused treatment funds from the civil commitment center operated under chapter 71.09 RCW to the division of children and family services to provide treatment services for sexually aggressive youth. [2009 c 520 § 62; 1993 c 402 § 4.]

74.13.080 Group care placement—Prerequisites for payment. The department shall not make payment for any child in group care placement unless the group home is licensed and the department has the custody of the child and the authority to remove the child in a cooperative manner after at least seventy-two hours notice to the child care provider; such notice may be waived in emergency situations. However, this requirement shall not be construed to prohibit the department from making or mandate the department to make payment for Indian children placed in facilities licensed by federally recognized Indian tribes pursuant to chapter 74.15 RCW. [1987 c 170 § 11; 1982 c 118 § 2.]

Additional notes found at www.leg.wa.gov

74.13.1051 Foster youth education and plans for the future—Memoranda of understanding among agencies—Transfer of responsibilities from the department—Indicators relating to education outcomes—Reports. (1) In order to proactively support foster youth to complete high school, enroll and complete postsecondary education, and successfully implement their own plans for their futures, the department, the student achievement council, and the office of the superintendent of public instruction shall enter into, or revise existing, memoranda of understanding that:

(a) Facilitate student referral, data and information exchange, agency roles and responsibilities, and cooperation and collaboration among state agencies and nongovernmental entities; and

(b) Effectuate the transfer of responsibilities from the department to the office of the superintendent of public instruction with respect to the programs in RCW 28A.300.592, and from the department to the student achievement council with respect to the program in RCW 28B.77.250 in a smooth, expedient, and coordinated fashion.

(2) The student achievement council and the office of the superintendent of public instruction shall establish a set of indicators relating to the outcomes provided in RCW 28A.300.590 and 28A.300.592 to provide consistent services for youth, facilitate transitions among contractors, and support outcome-driven contracts. The student achievement council and the superintendent of public instruction shall collaborate with nongovernmental contractors and the department to develop a list of the most critical indicators, establishing a common set of indicators to be used in the outcome-driven contracts in RCW 28A.300.590 and 28A.300.592. A list of these indicators must be included in the report provided in subsection (3) of this section.

(3) By November 1, 2017, and biannually thereafter, the department, the student achievement council, and the office of the superintendent of public instruction, in consultation with the nongovernmental entities engaged in public-private partnerships shall submit a joint report to the governor and the appropriate education and human services committees of the legislature regarding each of these programs, individually, as well as the collective progress the state has made toward the following goals:

(a) To make Washington number one in the nation for foster care graduation rates;

(b) To make Washington number one in the nation for foster care enrollment in postsecondary education; and

(c) To make Washington number one in the nation for foster care postsecondary completion.

(4) The department, the student achievement council, and the office of the superintendent of public instruction, in consultation with the nongovernmental entities engaged in public-private partnerships, shall also submit one report by November 1, 2018, to the governor and the appropriate education and human service committees of the legislature regarding the transfer of responsibilities from the department to the office of the superintendent of public instruction with respect to the programs in RCW 28A.300.592, and from the department to the student achievement council with respect to the program in RCW 28B.77.250 and whether these transfers have resulted in better coordinated services for youth. [2017 3rd sp.s. c 6 § 405; 2016 c 71 § 6.]

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.

Intent—2016 c 71: See note following RCW 28A.300.590.

74.13.107 Child and family reinvestment account—Methodology for calculating savings resulting from reductions in foster care caseloads and per capita costs.

Reviser's note: RCW 74.13.107 was amended by 2017 3rd sp.s. c 6 § 406 without reference to its repeal by 2017 3rd sp.s. c 20 § 15. It has been decodified for publication purposes under RCW 1.12.025.

74.13.110 Contracted services performance improvement account. (1) The department of children, youth, and families contracted services performance improvement account is created in the state treasury. Moneys in the account may be spent only after appropriation. Moneys in the account may be expended solely to improve contracted services provided to clients under the agency's program areas, including child welfare, early learning, family support, and adolescents, to support (a) achieving permanency for children; (b) improving foster home retention and stability of placements; (c) improving and increasing placement options for youth in out-of-home care; (d) preventing out-of-home placement; and (e) achieving additional, measurable department of children, youth, and families outcome goals adopted by the department.

(2) Revenues to the department of children, youth, and families contracted services performance improvement account consist of: (a) Legislative appropriations; and (b) any other public or private funds appropriated to or deposited in the account. [2019 c 470 § 16; 2017 3rd sp.s. c 20 § 14.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

ADOPTION SUPPORT DEMONSTRATION ACT OF 1971

74.13.170 Therapeutic family home program for youth in custody under chapter 13.34 RCW. The department may, through performance-based contracts with agencies, implement a therapeutic family home program for up to fifteen youth in the custody of the department under chapter 13.34 RCW. The program shall strive to develop and maintain a mutually reinforcing relationship between the youth and the therapeutic staff associated with the program. [2018 c 284 § 44; 2009 c 520 § 70; 1991 c 326 § 2.]

74.13.232 Services to homeless families. The department's duty to provide services to homeless families with children is set forth in RCW 43.20A.790 and in appropriations provided by the legislature for implementation of the comprehensive plan for homeless families with children. [2009 c 520 § 50.]

FOSTER CARE

74.13.250 Preservice training—Foster parents. (1) Preservice training is recognized as a valuable tool to reduce placement disruptions, the length of time children are in care, and foster parent turnover rates. Preservice training also assists potential foster parents in making their final decisions about foster parenting and assists social service agencies in obtaining information about whether to approve potential foster parents.

(2) Foster parent preservice training shall include information about the potential impact of placement on foster children; social service agency administrative processes; the requirements, responsibilities, expectations, and skills needed to be a foster parent; attachment, separation, and loss issues faced by birth parents, foster children, and foster parents; child management and discipline; birth family relationships; information on the limits of the adoption support program as provided in RCW 74.13A.020(4); and helping children leave foster care. Preservice training shall assist applicants in making informed decisions about whether they want to be foster parents. Preservice training shall be designed to enable the agency to assess the ability, readiness, and appropriateness of families to be foster parents. As a decision tool, effective preservice training provides potential foster parents with enough information to make an appropriate decision, affords potential foster parents an opportunity to discuss their decision with others and consider its implications for their family, clarifies foster family expectations, presents a realistic picture of what foster parenting involves, and allows potential foster parents to consider and explore the different types of children they might serve.

(3) Foster parents shall complete preservice training before the issuance of a foster care license, except that the department may, on a case by case basis, issue a written waiver that allows the foster parent to complete the training after licensure, so long as the training is completed within ninety days following licensure.

(4) All components of the foster parent preservice training shall be made available online. The department shall allow individuals to complete as much online preservice training as is practicable while requiring that some preservice training be completed in person. [2018 c 20 § 1. Prior: 2009 c 520 § 71; 2009 c 491 § 10; 1990 c 284 § 2.]

Finding—1990 c 284: "The legislature finds that the foster care system plays an important role in preserving families and giving consistent and nurturing care to children placed in its care. The legislature further finds that foster parents play an integral and important role in the system and particularly in the child's chances for the earliest possible reunification with his or her family." [1990 c 284 § 1.]

Additional notes found at www.leg.wa.gov

74.13.260 On-site monitoring program. Regular on-site monitoring of foster homes to assure quality care improves care provided to children in family foster care. An on-site monitoring program shall be established by the department to assure quality care and regularly identify problem areas. Monitoring shall be done by the department on a random sample basis of no less than ten percent of the total licensed family foster homes licensed by the department on July 1 of each year. [1998 c 245 § 148; 1990 c 284 § 4.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.270 Respite care. (1) The legislature recognizes the need for temporary short-term relief for foster parents who care for children with emotional, mental, or physical disabilities. For purposes of this section, respite care means appropriate, temporary, short-term care for these foster children placed with licensed foster parents. The purpose of this care is to give the foster parents temporary relief from the stresses associated with the care of these foster children. The department shall design a program of respite care that will minimize disruptions to the child and will serve foster parents within these priorities, based on input from foster parents, foster parent associations, and reliable research if available.

(2)(a) For the purposes of this section, and subject to funding appropriated specifically for this purpose, short-term support shall include case aides who provide temporary assistance to foster parents as needed with the overall goal of supporting the parental efforts of the foster parents except that this assistance shall not include overnight assistance. The department shall contract with nonprofit community-based organizations in each region to establish a statewide pool of individuals to provide the support described in this subsection. These individuals shall be employees or volunteers with the nonprofit community-based organization and shall have the appropriate training, background checks, and qualifications as determined by the department. Short-term support as described in this subsection shall be available to all licensed foster parents in the state as funding is available and shall be phased in by geographic region. To obtain the assistance of a case aide for this purpose, the foster parent may request the services from the nonprofit community-based organization and the nonprofit community-based organization may offer assistance to licensed foster families. If the requests for the short-term support provided in this subsection exceed the funding available, the nonprofit community-based organization shall have discretion to determine the assignment of case aides. The nonprofit community-based organization shall report all short-term support provided under this subsection to the department.

(b) Subject to funding appropriated specifically for this purpose, the Washington state institute for public policy shall prepare an outcome evaluation of the short-term support described in this subsection. The evaluation will, to the maximum extent possible, assess the impact of the short-term support services described in this subsection on the retention of foster homes and the number of placements a foster child receives while in out-of-home care as well as the return on investment to the state. The institute shall submit a preliminary report to the appropriate committees of the legislature and the governor by December 1, 2018, that describes the initial implementation of these services and descriptive statistics of the families utilizing these services. A final report shall be submitted to the appropriate committees of the legislature by June 30, 2021. At no cost to the institute, the department shall provide all data necessary to discharge this duty.

(c) Costs associated with case aides as described in this subsection shall not be included in the forecast.

(d) Pursuant to RCW 41.06.142(3), performance-based contracting under (a) of this subsection is expressly mandated by the legislature and is not subject to the processes set forth in RCW 41.06.142 (1), (4), and (5). [2019 c 470 § 29; 2017 3rd sp.s. c 20 § 1; 1990 c 284 § 8.]

Construction—Competitive procurement process and contract provisions—2017 3rd sp.s. c 20: "Pursuant to RCW 41.06.142(3), the competitive procurement process and contract provisions in this act are expressly mandated by the legislature and are not subject to the processes of RCW 41.06.142 (1), (4), and (5)." [2017 3rd sp.s. c 20 § 19.]

Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: "If any part of this act is found to be in conflict with P.L. 95-608 Indian Child Welfare Act of 1978 or 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 of P.L. 95-608 Indian Child Welfare Act of 1978 and federal requirements that are a necessary condition to the receipt of federal funds by the state." [2017 3rd sp.s. c 20 § 23.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.280 Client information. (1) Except as provided in RCW 70.02.220, whenever a child is placed in out-of-home care by the department or with an agency, the department or agency shall share information known to the department or agency about the child and the child's family with the care provider and shall consult with the care provider regarding the child's case plan. If the child is dependent pursuant to a proceeding under chapter 13.34 RCW, the department or agency shall keep the care provider informed regarding the dates and location of dependency review and permanency planning hearings pertaining to the child.

(2) Information about the child and the child's family shall include information known to the department or agency as to whether the child is a sexually reactive child, has exhibited high-risk behaviors, or is physically assaultive or physically aggressive, as defined in this section.

(3) Information about the child shall also include information known to the department or agency that the child:

(a) Has received a medical diagnosis of fetal alcohol syndrome or fetal alcohol effect;

(b) Has been diagnosed by a qualified mental health professional as having a mental health disorder;

(c) Has witnessed a death or substantial physical violence in the past or recent past; or

(d) Was a victim of sexual or severe physical abuse in the recent past.

(4) Any person who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information except as authorized by law. Care providers shall agree in writing to keep the information that they receive confidential and shall affirm that the information will not be further disclosed or disseminated, except as authorized by law.

(5) Nothing in this section shall be construed to limit the authority of the department or an agency to disclose client information or to maintain client confidentiality as provided by law.

(6) The department may share the following mental health treatment records with a care provider, even if the child does not consent to releasing those records, if the department has initiated treatment pursuant to RCW 71.34.600 through 71.34.670:

(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.

(7) The department may not share substance use disorder treatment records with a care provider without the written consent of the child except as permitted by federal law.

(8) For the purposes of this section:

(a) "Sexually reactive child" means a child who exhibits sexual behavior problems including, but not limited to, sexual behaviors that are developmentally inappropriate for their age or are harmful to the child or others.

(b) "High-risk behavior" means an observed or reported and documented history of one or more of the following:

(i) Suicide attempts or suicidal behavior or ideation;

(ii) Self-mutilation or similar self-destructive behavior;

(iii) Fire-setting or a developmentally inappropriate fascination with fire;

(iv) Animal torture;

(v) Property destruction; or

(vi) Substance or alcohol abuse.

(c) "Physically assaultive or physically aggressive" means a child who exhibits one or more of the following behaviors that are developmentally inappropriate and harmful to the child or to others:

(i) Observed assaultive behavior;

(ii) Reported and documented history of the child willfully assaulting or inflicting bodily harm; or

(iii) Attempting to assault or inflict bodily harm on other children or adults under circumstances where the child has the apparent ability or capability to carry out the attempted assaults including threats to use a weapon.

(d) "Care provider" means a person with whom a child is placed in out-of-home care, or a designated official for a group care facility licensed by the department. [2019 c 381 § 21; 2018 c 284 § 45; 2013 c 200 § 28; 2009 c 520 § 72. Prior: 2007 c 409 § 6; 2007 c 220 § 4; 2001 c 318 § 3; 1997 c 272 § 7; 1995 c 311 § 21; 1991 c 340 § 4; 1990 c 284 § 10.]

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

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

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Additional notes found at www.leg.wa.gov

74.13.283 Washington state identicards—Foster youth. (1) For the purpose of assisting foster youth in obtaining a Washington state identicard, submission of the information and materials listed in this subsection from the department to the department of licensing is sufficient proof of identity and residency and shall serve as the necessary authorization for the youth to apply for and obtain a Washington state identicard:

(a) A written signed statement prepared on department letterhead, verifying the following:

(i) The youth is a minor who resides in Washington;

(ii) Pursuant to a court order, the youth is dependent and the department is the legal custodian of the youth under chapter 13.34 RCW or under the interstate compact on the placement of children;

(iii) The youth's full name and date of birth;

(iv) The youth's social security number, if available;

(v) A brief physical description of the youth;

(vi) The appropriate address to be listed on the youth's identicard; and

(vii) Contact information for the appropriate person with the department.

(b) A photograph of the youth, which may be digitized and integrated into the statement.

(2) The department may provide the statement and the photograph via any of the following methods, whichever is most efficient or convenient:

(a) Delivered via first-class mail or electronically to the headquarters office of the department of licensing; or

(b) Hand-delivered to a local office of the department of licensing by a department caseworker.

(3) A copy of the statement shall be provided to the youth who shall provide the copy to the department of licensing when making an in-person application for a Washington state identicard.

(4) To the extent other identifying information is readily available, the department shall include the additional information with the submission of information required under subsection (1) of this section. [2018 c 284 § 46; 2009 c 520 § 73; 2008 c 267 § 7.]

74.13.285 Passports—Information to be provided to foster parents. (1) Within available resources, the department shall prepare a passport containing all known and available information concerning the mental, physical, health, and educational status of the child for any child who has been in a foster home for ninety consecutive days or more. The passport shall contain education records obtained pursuant to RCW 28A.150.510. The passport shall be provided to a foster parent at any placement of a child covered by this section. The department shall update the passport during the regularly scheduled court reviews required under chapter 13.34 RCW.

New placements shall have first priority in the preparation of passports.

(2) In addition to the requirements of subsection (1) of this section, the department shall, within available resources, notify a foster parent before placement of a child of any known health conditions that pose a serious threat to the child and any known behavioral history that presents a serious risk of harm to the child or others.

(3) The department shall hold harmless the provider for any unauthorized disclosures caused by the department.

(4) Any foster parent who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information, except as authorized by law. Such individuals shall agree in writing to keep the information that they receive confidential and shall affirm that the information will not be further disclosed or disseminated, except as authorized by law. [2018 c 284 § 47; 2009 c 520 § 74; 2007 c 409 § 7; 2000 c 88 § 2; 1997 c 272 § 5.]

Additional notes found at www.leg.wa.gov

74.13.287 Intent—Infant, foster family health. The legislature intends to establish a policy with the goal of ensuring that the health and well-being of both infants in foster care and the families providing for their care are protected. [2004 c 40 § 1.]

74.13.288 Blood-borne pathogens—Testing. The department of health shall develop recommendations concerning evidence-based practices for testing for blood-borne pathogens of children under one year of age who have been placed in out-of-home care and shall identify the specific

pathogens for which testing is recommended. [2009 c 520 § 75; 2004 c 40 § 2.]

74.13.289 Blood-borne pathogens—Client information—Training. (1) Upon any placement, the department shall inform each out-of-home care provider if the child to be placed in that provider's care is infected with a blood-borne pathogen, and shall identify the specific blood-borne pathogen for which the child was tested if known by the department.

(2) All out-of-home care providers licensed by the department shall receive training related to blood-borne pathogens, including prevention, transmission, infection control, treatment, testing, and confidentiality.

(3) Any disclosure of information related to HIV must be in accordance with RCW 70.02.220.

(4) The department of health shall identify by rule the term "blood-borne pathogen" as used in this section. [2018 c 284 § 48; 2013 c 200 § 29; 2009 c 520 § 76; 2004 c 40 § 3.]

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

74.13.290 Fewest possible placements for children—Preferred placements. (1) To provide stability to children in out-of-home care, placement selection shall be made with a view toward the fewest possible placements for each child. If possible, the initial placement shall be viewed as the only placement for the child. Pursuant to RCW 13.34.060 and 13.34.130, placement of the child with a relative or other suitable person is the preferred option. The use of short-term interim placements of thirty days or less to protect the child's health or safety while the placement of choice is being arranged is not a violation of this principle.

(2) If a child has been previously placed in out-of-home care and is subsequently returned to out-of-home care, and the department cannot locate an appropriate and available relative or other suitable person, the preferred placement for the child is in a foster family home where the child previously was placed, if the following conditions are met:

(a) The foster family home is available and willing to care for the child;

(b) The foster family is appropriate and able to meet the child's needs; and

(c) The placement is in the best interest of the child. [2009 c 482 § 1; 1990 c 284 § 11.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.300 Notification of proposed placement changes. (1) Whenever a child has been placed in a foster family home by the department and the child has thereafter resided in the home for at least ninety consecutive days, the department shall notify the foster family at least five days prior to moving the child to another placement, unless:

(a) A court order has been entered requiring an immediate change in placement;

(b) The child is being returned home;

(c) The child's safety is in jeopardy; or

(d) The child is residing in a receiving home or a group home.

(2) If the child has resided in a foster family home for less than ninety days or if, due to one or more of the circumstances in subsection (1) of this section, it is not possible to give five days' notification, the department shall notify the foster family of proposed placement changes as soon as reasonably possible.

(3) This section is intended solely to assist in minimizing disruption to the child in changing foster care placements. Nothing in this section shall be construed to require that a court hearing be held prior to changing a child's foster care placement nor to create any substantive custody rights in the foster parents. [2018 c 284 § 49; 2009 c 520 § 77; 1990 c 284 § 12.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.310 Foster parent training. Adequate foster parent training has been identified as directly associated with increasing the length of time foster parents are willing to provide foster care and reducing the number of placement disruptions for children. Placement disruptions can be harmful to children by denying them consistent and nurturing support. Foster parents have expressed the desire to receive training in addition to the foster parent training currently offered. Foster parents who care for more demanding children, such as children with severe emotional, mental, or physical handicaps, would especially benefit from additional training. The department shall develop additional training for foster parents that focuses on skills to assist foster parents in caring for emotionally, mentally, or physically handicapped children. [2018 c 284 § 50; 2009 c 520 § 78; 1990 c 284 § 13.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.315 Child care for foster parents attending meetings or training. The department may provide child care for all foster parents who are required to attend department-sponsored meetings or training sessions. If the department does not provide such child care, the department, where feasible, shall conduct the activities covered by this section in the foster parent's home or other location acceptable to the foster parent. [2018 c 284 § 51; 2009 c 520 § 79; 1997 c 272 § 6.]

Additional notes found at www.leg.wa.gov

74.13.325 Foster care and adoptive home recruitment program. Within available resources, the department shall increase the number of adoptive and foster families available to accept children through an intensive recruitment and retention program. [2018 c 284 § 52; 2009 c 520 § 81; 1997 c 272 § 3.]

Additional notes found at www.leg.wa.gov

74.13.330 Responsibilities of foster parents. Foster parents are responsible for the protection, care, supervision, and nurturing of the child in placement. As an integral part of the foster care team, foster parents shall, if appropriate and they desire to: Participate in the development of the service plan for the child and the child's family; assist in family visitation, including monitoring; model effective parenting behavior for the natural family; and be available to help with the child's transition back to the natural family. [2007 c 410 § 7; 1990 c 284 § 23.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Additional notes found at www.leg.wa.gov

74.13.332 Rights of foster parents. Foster parents have the right to be free of coercion, discrimination, and reprisal in serving foster children, including the right to voice grievances about treatment furnished or not furnished to the foster child. [2001 c 318 § 1.]

74.13.333 Rights of foster parents—Complaints—Investigation—Notice of any personnel action—Report. (1) A foster parent who believes that a department employee has retaliated against the foster parent or in any other manner discriminated against the foster parent because:

(a) The foster parent made a complaint with the office of the family and children's ombuds, the attorney general, law enforcement agencies, or the department provided information, or otherwise cooperated with the investigation of such a complaint;

(b) The foster parent has caused to be instituted any proceedings under or related to Title 13 RCW;

(c) The foster parent has testified or is about to testify in any proceedings under or related to Title 13 RCW;

(d) The foster parent has advocated for services on behalf of the foster child;

(e) The foster parent has sought to adopt a foster child in the foster parent's care; or

(f) The foster parent has discussed or consulted with anyone concerning the foster parent's rights under this chapter or chapter 74.15 or 13.34 RCW, may file a complaint with the office of the family and children's ombuds.

(2) The ombuds may investigate the allegations of retaliation. The ombuds shall have access to all relevant information and resources held by or within the department by which to conduct the investigation. Upon the conclusion of its investigation, the ombuds shall provide its findings in written form to the department.

(3) The department shall notify the office of the family and children's ombuds in writing, within thirty days of receiving the ombuds's findings, of any personnel action taken or to be taken with regard to the department employee.

(4) The office of the family and children's ombuds shall also include its recommendations regarding complaints filed under this section in its annual report pursuant to RCW 43.06A.030. The office of the family and children's ombuds shall identify trends which may indicate a need to improve relations between the department and foster parents. [2018 c 284 § 53; 2013 c 23 § 206. Prior: 2009 c 520 § 82; 2009 c 491 § 11; 2004 c 181 § 1.]

74.13.334 Department procedures to respond to foster parents' complaints. The department shall develop procedures for responding to recommendations of the office of the family and children's ombuds as a result of any and all complaints filed by foster parents under RCW 74.13.333. [2018 c 284 § 54; 2013 c 23 § 207; 2009 c 520 § 83; 2004 c 181 § 2.]

74.13.335 Foster care—Reimbursement—Property damage. Within available funds and subject to such conditions and limitations as may be established by the department or by the legislature in the omnibus appropriations act, the department shall reimburse foster parents for property damaged or destroyed by foster children placed in their care. The department shall establish by rule a maximum amount that may be reimbursed for each occurrence. The department shall reimburse the foster parent for the replacement value of any property covered by this section. If the damaged or destroyed property is covered and reimbursed under an insurance policy, the department shall reimburse foster parents for the amount of the deductible associated with the insurance claim, up to the limit per occurrence as established by the department. [2017 3rd sp.s. c 6 § 407; 1999 c 338 § 2.]

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.

Intent—1999 c 338: "The legislature recognizes that Washington state is experiencing a significant shortage of quality foster homes and that the majority of children entering the system are difficult to place due to their complex needs. The legislature intends to provide additional assistance to those families willing to serve as foster parents." [1999 c 338 § 1.]

74.13.336 Extended foster care services. (1) A youth who has reached age eighteen years may request extended foster care services authorized under RCW 74.13.031 at any time before he or she reaches the age of twenty-one years if:

(a) The dependency proceeding of the youth was dismissed pursuant to RCW 13.34.267(4) at the time that he or she reached age eighteen years; or

(b) The court, after holding the dependency case open pursuant to RCW 13.34.267(1), has dismissed the case because the youth became ineligible for extended foster care services.

(2)(a) Upon a request for extended foster care services by a youth pursuant to subsection (1) of this section, a determination that the youth is eligible for extended foster care services, and the completion of a voluntary placement agreement, the department shall provide extended foster care services to the youth.

(b) In order to continue receiving extended foster care services after entering into a voluntary placement agreement with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in extended foster care pursuant to a voluntary placement agreement.

(3) A youth may enter into a voluntary placement agreement for extended foster care services. A youth may transition among the eligibility categories identified in RCW 74.13.031 while under the same voluntary placement agreement, provided that the youth remains eligible for extended foster care services during the transition.

(4) "Voluntary placement agreement," for the purposes of this section, means a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program. [2018 c 34 § 4; 2013 c 332 § 5.]

Effective date—2018 c 34: See note following RCW 13.34.267.

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

74.13.338 Driver's license support for foster youth. (1) Subject to the availability of funds appropriated for this specific purpose, the department shall contract with a private nonprofit organization that agrees to work collaboratively with independent living providers and the department and is selected after a competitive application process to provide driver's license support for foster youth, including youth receiving extended foster care services.

(2) The nonprofit organization selected pursuant to subsection (1) of this section shall provide support for foster youth ages fifteen through twenty-one, including youth receiving extended foster care services, in navigating the driver's licensing process. This support must include:

(a) Reimbursement of fees necessary for a foster youth to obtain a driver's instruction permit, an intermediate license, and a standard or enhanced driver's license, including any required examination fees, as described in chapter 46.20 RCW;

(b) Reimbursement of fees required for a foster youth to complete a driver training education course, if the foster youth is under the age of eighteen, as outlined in chapter 46.82 or 28A.220 RCW;

(c) Reimbursement of the increase in motor vehicle liability insurance costs incurred by foster parents, relative placements, or other foster placements adding a foster youth to his or her motor vehicle liability insurance policy, with a preference on reimbursements for those foster youth who practice safe driving and avoid moving violations and at-fault collisions.

(3) By December 1, 2019, the nonprofit organization selected pursuant to subsection (1) of this section shall submit a report to the department and the appropriate committees of the legislature, including the transportation committees of the legislature, documenting the number of foster youth served by the program; the average cost per youth served; the extent to which foster youth report any negative outcomes of the program, including a foster parent's inappropriate use of a foster youth's driving authorization; and recommendations for future policy or statutory or funding changes necessary to more effectively allow foster youth to obtain drivers' licenses and motor vehicle liability insurance. [2017 c 206 § 1.]

74.13.341 Transition plan—Qualification for developmental disability services. With respect to youth who will be aging out of foster care, the department shall invite representatives from the department of social and health services division of behavioral health and recovery, the disability services administration, the economic services administration, and the juvenile justice and rehabilitation administration to the youth's shared planning meeting that occurs between age seventeen and seventeen and one-half that is used to develop a transition plan. It is the responsibility of the department to include these agencies in the shared planning meeting. If foster youth who are the subject of this meeting may qualify for developmental disability services pursuant to Title 71A RCW, the department shall direct these youth to apply for these services and provide assistance in the application process. [2018 c 58 § 49; 2015 c 240 § 4.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

Effective date—2015 c 240: See note following RCW 13.34.267.

74.13.350 Children with developmental disabilities—Out-of-home placement—Voluntary placement agreement. (1) It is the intent of the legislature that parents are responsible for the care and support of children with developmental disabilities. The legislature recognizes that, because of the intense support required to care for a child with developmental disabilities, the help of an out-of-home placement may be needed. It is the intent of the legislature that, when the sole reason for the out-of-home placement is the child's developmental disability, such services be offered by the department to these children and their families through a voluntary placement agreement. In these cases, the parents shall retain legal custody of the child.

(2) Under the terms of a voluntary placement agreement, the parent or legal guardian shall retain legal custody and the department shall be responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement. The agreement must be signed by the child's parent or legal guardian and the department to be in effect, except that an agreement regarding an Indian child shall not be valid unless executed in accordance with RCW 13.38.150. Any party to a voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

(3) Whenever the department places a child in out-of-home care under a voluntary placement pursuant to this section, the department shall have the responsibility for the child's placement and care. The department shall develop a permanency plan of care for the child no later than sixty days from the date that the department assumes responsibility for the child's placement and care. Within the first one hundred eighty days of the placement, the department shall obtain a judicial determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination under RCW 13.04.030(1)(b) is required. The permanency planning hearings shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

(4) The department shall provide for periodic administrative reviews as required by federal law. A review may be called at any time by either the department, the parent, or the legal guardian.

(5) Nothing in this section shall prevent the department of children, youth, and families from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030.

(6) The department shall adopt rules providing for the implementation of chapter 386, Laws of 1997 and the transfer of responsibility for out-of-home placements from the depen-

dency process under chapter 13.34 RCW to the process under this chapter.

(7) It is the intent of the legislature that the department undertake voluntary out-of-home placement in cases where the child's developmental disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child, and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home. If the department does not accept a voluntary placement agreement signed by the parent, a petition may be filed and an action pursued under chapter 13.34 RCW. The department shall inform the parent, guardian, or legal custodian in writing of their right to civil action under chapter 13.34 RCW.

(8) Nothing in this section prohibits the department of children, youth, and families from seeking support from parents of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, when state or federal funds are expended for the care and maintenance of that child or when the department receives an application for services from the physical custodian of the child, unless the department of children, youth, and families finds that there is good cause not to pursue collection of child support against the parent or parents.

(9) For the purposes of this section:

(a) Unless the context clearly requires otherwise, "department" means the department of social and health services.

(b) "Out-of-home placement" and "out-of-home care" mean the placement of a child in a foster family home or group care facility licensed under chapter 74.15 RCW.

(c) "Voluntary placement agreement" means a written agreement between the department of social and health services and a child's parent or legal guardian authorizing the department to place the child in a licensed facility. [2019 c 470 § 17; 2011 c 309 § 34; 2004 c 183 § 4; 1998 c 229 § 1; 1997 c 386 § 16.]

Additional notes found at www.leg.wa.gov

74.13.500 Disclosure of child welfare records—Factors—Exception. (1) Consistent with the provisions of chapter 42.56 RCW and applicable federal law, the secretary, or the secretary's designee, shall disclose information regarding the abuse or neglect of a child, the investigation of the abuse, neglect, or near fatality of a child, and any services related to the abuse or neglect of a child if any one of the following factors is present:

(a) The subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained by the department in its case and management information system;

(b) The investigation of the abuse or neglect of the child by the department or the provision of services by the department has been publicly disclosed in a report required to be disclosed in the course of their official duties, by a law enforcement agency or official, a prosecuting attorney, any other state or local investigative agency or official, or by a judge of the superior court;

(c) There has been a prior knowing, voluntary public disclosure by an individual concerning a report of child abuse or neglect in which such individual is named as the subject of the report; or

(d) The child named in the report has died and the child's death resulted from abuse or neglect or the child was in the care of, or receiving services from the department at the time of death or within twelve months before death.

(2) The secretary is not required to disclose information if the factors in subsection (1) of this section are present if he or she specifically determines the disclosure is contrary to the best interests of the child, the child's siblings, or other children in the household.

(3) Except for cases in subsection (1)(d) of this section, requests for information under this section shall specifically identify the case about which information is sought and the facts that support a determination that one of the factors specified in subsection (1) of this section is present.

(4) For the purposes of this section, "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. The secretary is under no obligation to have an act certified by a physician in order to comply with this section. [2018 c 284 § 55; 2009 c 520 § 84; 2005 c 274 § 351; 1999 c 339 § 1; 1997 c 305 § 2.]

Additional notes found at www.leg.wa.gov

74.13.505 Disclosure of child welfare records—Information to be disclosed. For purposes of RCW 74.13.500, the following information shall be disclosable:

(1) The name of the abused or neglected child;

(2) The determination made by the department of the referrals, if any, for abuse or neglect;

(3) Identification of child protective or other services provided or actions, if any, taken regarding the child named in the report and his or her family as a result of any such report or reports. These records include but are not limited to administrative reports of fatality, fatality review reports, case files, inspection reports, and reports relating to social work practice issues; and

(4) Any actions taken by the department in response to reports of abuse or neglect of the child. [1997 c 305 § 3.]

Additional notes found at www.leg.wa.gov

74.13.510 Disclosure of child welfare records—Consideration of effects. In determining under RCW 74.13.500 whether disclosure will be contrary to the best interests of the child, the secretary, or the secretary's designee, must consider the effects which disclosure may have on efforts to reunite and provide services to the family. [1997 c 305 § 4.]

Additional notes found at www.leg.wa.gov

74.13.515 Disclosure of child welfare records—Fatalities. For purposes of RCW 74.13.500(1)(d), the secretary must make the fullest possible disclosure consistent with chapter 42.56 RCW and applicable federal law in cases of all fatalities of children who were in the care of, or receiving services from, the department at the time of their death or within the twelve months previous to their death.

If the secretary specifically determines that disclosure of the name of the deceased child is contrary to the best interests of the child's siblings or other children in the household, the secretary may remove personally identifying information.

For the purposes of this section, "personally identifying information" means the name, street address, social security number, and day of birth of the child who died and of private persons who are relatives of the child named in child welfare records. "Personally identifying information" shall not include the month or year of birth of the child who has died. Once this personally identifying information is removed, the remainder of the records pertaining to a child who has died must be released regardless of whether the remaining facts in the records are embarrassing to the unidentifiable other private parties or to identifiable public workers who handled the case. [2018 c 284 § 56; 2009 c 520 § 85; 2005 c 274 § 352; 1997 c 305 § 5.]

Additional notes found at www.leg.wa.gov

74.13.520 Disclosure of child welfare records—Information not to be disclosed. Except as it applies directly to the cause of the abuse or neglect of the child and any actions taken by the department in response to reports of abuse or neglect of the child, nothing in RCW 74.13.500 through 74.13.515 is deemed to authorize the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical, or medical reports, evaluations, or like materials, or information pertaining to the child or the child's family. [1997 c 305 § 6.]

Additional notes found at www.leg.wa.gov

74.13.525 Disclosure of child welfare records—Immunity from liability. The department, when acting in good faith, is immune from any criminal or civil liability, except as provided under RCW 42.56.550, for any action taken under RCW 74.13.500 through 74.13.520. [2018 c 284 § 57; 2009 c 520 § 86; 2005 c 274 § 353; 1997 c 305 § 7.]

Additional notes found at www.leg.wa.gov

74.13.530 Child placement—Conflict of interest. (1) No child may be placed or remain in a specific out-of-home placement under this chapter or chapter 13.34 RCW when there is a conflict of interest on the part of any adult residing in the home in which the child is to be or has been placed. A conflict of interest exists when:

(a) There is an adult in the home who, as a result of: (i) His or her employment; and (ii) an allegation of abuse or neglect of the child, conducts or has conducted an investigation of the allegation; or

(b) The child has been, is, or is likely to be a witness in any pending cause of action against any adult in the home when the cause includes: (i) An allegation of abuse or neglect against the child or any sibling of the child; or (ii) a claim of damages resulting from wrongful interference with the parent-child relationship of the child and his or her biological or adoptive parent.

(2) For purposes of this section, "investigation" means the exercise of professional judgment in the review of allegations of abuse or neglect by: (a) Law enforcement personnel; (b) persons employed by, or under contract with, the state; (c) persons licensed to practice law and their employees; and (d) mental health professionals as defined in chapter 71.05 RCW.

(3) The prohibition set forth in subsection (1) of this section may not be waived or deferred by the department under any circumstance or at the request of any person, regardless of who has made the request or the length of time of the requested placement. [2018 c 284 § 58; 2009 c 520 § 87; 2001 c 318 § 4.]

74.13.540 Independent living services. Independent living services include assistance in achieving basic educational requirements such as a high school equivalency certificate as provided in RCW 28B.50.536, enrollment in vocational and technical training programs offered at the community and vocational colleges, and obtaining and maintaining employment; and accomplishing basic life skills such as money management, nutrition, preparing meals, and cleaning house. A baseline skill level in ability to function productively and independently shall be determined at entry. Performance shall be measured and must demonstrate improvement from involvement in the program. Each recipient shall have a plan for achieving independent living skills by the time the recipient reaches age twenty-one. The plan shall be written within the first thirty days of placement and reviewed every ninety days. A recipient who fails to consistently adhere to the elements of the plan shall be subject to reassessment by the professional staff of the program and may be declared ineligible to receive services. [2013 c 39 § 30; 2001 c 192 § 2.]

74.13.550 Child placement—Policy of educational continuity. It is the policy of the state of Washington that, whenever practical and in the best interest of the child, children placed into foster care shall remain enrolled in the schools they were attending at the time they entered foster care. [2003 c 112 § 2.]

Findings—Intent—2003 c 112: "The legislature finds that the educational attainment of children in foster care is significantly lower than that of children not in foster care. The legislature finds that many factors influence educational outcomes for children in foster care, including the disruption of the educational process because of repeatedly changing schools.

The legislature recognizes the importance of educational stability for foster children, and encourages the ongoing efforts of the department of social and health services and the office of the superintendent of public instruction to improve educational attainment of children in foster care. It is the intent of the legislature that efforts continue such as the recruitment of foster homes in school districts with high rates of foster care placements, the development and dissemination of informational materials regarding the challenges faced by children in foster care, and the expansion to other school districts of best practices identified in pilot projects." [2003 c 112 § 1.]

74.13.560 Educational continuity—Protocol development. (1) The administrative regions of the department shall, in collaboration with school districts within their region as required by RCW 28A.225.360, develop protocols specifying specific strategies for communication, coordination, and collaboration regarding the status and progress of children in out-of-home care placed in the region. The purpose of the protocols is to maximize the educational continuity and achievement for children in out-of-home care. The protocols must include methods to assure effective sharing of information, consistent with RCW 28A.225.330.

(2) The protocols required by this section must also include protocols for making best interest determinations for students in out-of-home care that comply with RCW 28A.225.350. The protocols for making best interest determi-

nations for students in out-of-home care must be implemented before changing the school placement of a student.

(3) For the purposes of this section, "out-of-home care" has the same meaning as in RCW 13.34.030. [2018 c 284 § 59; 2018 c 139 § 4; 2009 c 520 § 88; 2003 c 112 § 3.]

Reviser's note: This section was amended by 2018 c 139 § 4 and by 2018 c 284 § 59, 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—2018 c 139: See note following RCW 28A.225.350.

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.570 Oversight committee—Duties. (1) The department shall establish an oversight committee composed of staff from the office of the superintendent of public instruction, the student achievement council, foster youth, former foster youth, foster parents, and advocacy agencies to develop strategies for maintaining foster children in the schools they were attending at the time they entered foster care and to promote opportunities for foster youth to participate in postsecondary education or training.

(2) The duties of the oversight committee shall include, but are not limited to:

(a) Developing strategies for school-based recruitment of foster homes;

(b) Monitoring the progress of current pilot projects that assist foster children to continue attending the schools they were attending at the time they entered foster care;

(c) Overseeing the expansion of the number of pilot projects;

(d) Promoting the use of best practices, throughout the state, demonstrated by the pilot projects and other programs relating to maintaining foster children in the schools they were attending at the time they entered foster care;

(e) Informing the legislature of the status of efforts to maintain foster children in the schools they were attending at the time they entered foster care;

(f) Assessing the scope and nature of statewide need among current and former foster youth for assistance to pursue and participate in postsecondary education or training opportunities;

(g) Identifying available sources of funding available in the state for services to former foster youth to pursue and participate in postsecondary education or training opportunities;

(h) Reviewing the effectiveness of activities in the state to support former foster youth to pursue and participate in postsecondary education or training opportunities;

(i) Identifying new activities, or existing activities that should be modified or expanded, to best meet statewide needs; and

(j) Reviewing on an ongoing basis the progress toward improving educational and vocational outcomes for foster youth. [2018 c 58 § 58; 2012 c 229 § 594; 2005 c 93 § 2; 2003 c 112 § 4.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

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.

Findings—Intent—2005 c 93: "(1) The legislature finds that:

(a) The majority of foster youth fail to thrive in our educational system and, relative to nonfoster youth, disproportionately few enroll in college or other postsecondary training programs. As a result, former foster youth generally have poor employment and life satisfaction outcomes; and

(b) Low expectations, lack of information, fragmented support services, and financial hardship are the most frequently cited reasons for failure of foster youth to pursue postsecondary education or training. Initiatives have been undertaken at both the state and community levels in Washington to improve outcomes for foster youth in transition to independence; however, these initiatives are often not coordinated to complement one another.

(2) The legislature intends to encourage and support foster youth to pursue postsecondary education or training opportunities. A coordination committee that provides statewide planning and oversight of related efforts will improve the effectiveness of both current and future initiatives to improve postsecondary educational outcomes for foster youth. In addition, the state can provide financial support to former foster youth pursuing higher education or training by setting aside portions of the state need grant and the state work-study programs specifically for foster youth." [2005 c 93 § 1.]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.580 Educational stability during shelter care hearing—Protocol development. The department shall work with the administrative office of the courts to develop protocols to ensure that educational stability is addressed during the shelter care hearing. [2003 c 112 § 5.]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.590 Tasks to be performed based on available resources. The department shall perform the tasks provided in RCW 74.13.550 through 74.13.580 based on available resources. [2018 c 284 § 60; 2009 c 520 § 89; 2003 c 112 § 6.]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.600 Kinship caregivers—Definition—Placement of children with kin a priority—Strategies. (1) For the purposes of this section, "kin" means persons eighteen years of age or older to whom the child is related by blood, adoption, or marriage, including marriages that have been dissolved, and means: (a) Any person denoted by the prefix "grand" or "great"; (b) sibling, whether full, half, or step; (c) uncle or aunt; (d) nephew or niece; or (e) first cousin.

(2) The department shall plan, design, and implement strategies to prioritize the placement of children with willing and able kin when out-of-home placement is required.

These strategies must include at least the following:

(a) Development of standardized, statewide procedures to be used when searching for kin of children prior to out-of-home placement. The procedures must include a requirement that documentation be maintained in the child's case record that identifies kin, and documentation that identifies the assessment criteria and procedures that were followed during all kin searches. The procedures must be used when a child is placed in out-of-home care under authority of chapter 13.34 RCW, when a petition is filed under RCW 13.32A.140, or when a child is placed under a voluntary placement agreement. To assist with implementation of the procedures, the department shall request that the juvenile court require parents to disclose to the department all contact information for available and appropriate kin within two weeks of an entered order. For placements under signed voluntary agreements, the department shall encourage the parents to disclose to the department all contact information for available and appropriate kin within two weeks of the date the parent signs the voluntary placement agreement.

(b) Development of procedures for conducting active outreach efforts to identify and locate kin during all searches. The procedures must include at least the following elements:

(i) Reasonable efforts to interview known kin, friends, teachers, and other identified community members who may have knowledge of the child's kin, within sixty days of the child entering out-of-home care;

(ii) Increased use of those procedures determined by research to be the most effective methods of promoting reunification efforts, permanency planning, and placement decisions;

(iii) Contacts with kin identified through outreach efforts and interviews under this subsection as part of permanency planning activities and change of placement discussions;

(iv) Establishment of a process for ongoing contact with kin who express interest in being considered as a placement resource for the child; and

(v) A requirement that when the decision is made to not place the child with any kin, the department provides documentation as part of the child's individual service and safety plan that clearly identifies the rationale for the decision and corrective action or actions the kin must take to be considered as a viable placement option.

(3) Nothing in this section shall be construed to create an entitlement to services or to create judicial authority to order the provision of services to any person or family if the services are unavailable or unsuitable or the child or family is not eligible for such services. [2018 c 284 § 61; 2009 c 520 § 90; 2003 c 284 § 1.]

74.13.621 Kinship care oversight committee. (1) Within existing resources, the department shall establish an oversight committee to monitor, guide, and report on kinship care recommendations and implementation activities. The committee shall:

(a) Draft a kinship care definition that is restricted to persons related by blood, marriage, or adoption, including marriages that have been dissolved, or for a minor defined as an "Indian child" under the federal Indian child welfare act (25 U.S.C. Sec. 1901 et seq.), the definition of "extended family member" under the federal Indian child welfare act, and a set of principles. If the committee concludes that one or more programs or services would be more efficiently and effectively delivered under a different definition of kin, it shall state what definition is needed, and identify the program or service in the report. It shall also provide evidence of how the program or service will be more efficiently and effectively delivered under the different definition. The department shall not adopt rules or policies changing the definition of kin without authorizing legislation;

(b) Monitor and provide consultation on the implementation of recommendations contained in the 2002 kinship care report, including but not limited to the recommendations relating to legal and respite care services and resources;

(c) Partner with nonprofit organizations and private sector businesses to guide a public education awareness campaign;

(d) Assist with developing future recommendations on kinship care issues; and

(e) Coordinate with the kinship care legal aid coordinator to develop, expand, and deliver training materials designed to help pro bono and low bono attorneys provide legal advice and assistance to kinship caregivers on matters that relate to their ability to meet physical, mental, social, educational, and other needs of children and youth in their care.

(2) The department shall consult with the oversight committee on its efforts to better collaborate and coordinate services to benefit kinship care families.

(3) The oversight committee must consist of a minimum of thirty percent kinship caregivers, who shall represent a diversity of kinship families. Statewide representation with geographic, ethnic, and gender diversity is required. Other members shall include representatives of the department, representatives of relevant state agencies, representatives of the private nonprofit and business sectors, child advocates, representatives of Washington state Indian tribes as defined under the federal Indian welfare act (25 U.S.C. Sec. 1901 et seq.), and representatives of the legal or judicial field. Birth parents, foster parents, and others who have an interest in these issues may also be included.

(4) To the extent funding is available, the department may reimburse nondepartmental members of the oversight committee for costs incurred in participating in the meetings of the oversight committee.

(5) The kinship care oversight committee shall update the legislature and governor annually on committee activities, with each update due by December 1st. [2019 c 465 § 2; 2017 3rd sp.s. c 1 § 982; 2015 3rd sp.s. c 4 § 970; 2013 2nd sp.s. c 4 § 996; (2011 1st sp.s. c 50 § 965 expired June 30, 2013); 2009 c 564 § 954; 2005 c 439 § 1.]

Effective date—2019 c 465: See note following RCW 2.53.055.

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

74.13.631 School-aged youth in out-of-home care—School placement options. (1) Consistent with the provisions for making best interest determinations established in RCW 28A.225.350 and 74.13.560, the department shall provide youth residing in out-of-home care the opportunity to remain enrolled in the school he or she was attending prior to out-of-home placement, unless the safety of the youth is jeopardized, or a relative or other suitable person placement approved by the department is secured for the youth, or it is determined not to be in the youth's best interest to remain enrolled in the school he or she was attending prior to out-of-home placement. If the parties in the dependency case disagree regarding which school the youth should be enrolled in, the youth may remain enrolled in the school of origin until the disagreement is resolved in court, unless the department determines that the youth is in immediate danger by remaining enrolled in the school of origin.

(2) Unless otherwise directed by the court, the educational responsibilities of the department for school-aged youth residing in out-of-home care are the following:

(a) To collaboratively discuss and document school placement options and plan necessary school transfers during the family team decision-making meeting;

(b) To notify the receiving school and the school of origin that a youth residing in foster care is transferring schools;

(c) To request and secure missing academic records or medical records required for school enrollment within ten business days;

(d) To document the request and receipt of academic records in the individual service and safety plan;

(e) To pay any unpaid fees or fines due by the youth to the school or school district;

(f) To notify all legal parties when a school disruption occurs; and

(g) To document factors that contributed to any school disruptions. [2018 c 139 § 5; 2013 c 182 § 6.]

Effective date—2018 c 139: See note following RCW 28A.225.350.

Findings—2013 c 182: See note following RCW 13.34.030.

74.13.632 School-aged youth in out-of-home care—Educational experiences and progress—Reports. (1) A university-based child welfare research entity shall include in its reporting the educational experiences and progress of students in out-of-home care with the department. This data must be disaggregated in the smallest units allowable by law that do not identify an individual student, in order to learn which of the department's offices and school districts are experiencing the greatest success and challenges in achieving quality educational outcomes with students in out-of-home care with the department.

(2) By January 1, 2015 and annually thereafter, the university-based child welfare research entity must submit a report to the legislature. To the extent possible, the report should include, but is not limited to, information on the following measures for a youth who is a dependent pursuant to chapter 13.34 RCW:

(a) Aggregate scores from the Washington state kindergarten readiness assessment;

(b) Aggregate scores from the third grade statewide student assessment in reading;

(c) Number of youth graduating from high school with a documented plan for postsecondary education, employment, or military service;

(d) Number of youth completing one year of postsecondary education, the equivalent of first-year student credits, or achieving a postsecondary certificate; and

(e) Number of youth who complete an associate or bachelor's degree.

(3) The report must identify strengths and weaknesses in practice and recommend to the legislature strategy and needed resources for improvement. [2018 c 58 § 48; 2013 c 182 § 7.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

Findings—2013 c 182: See note following RCW 13.34.030.

74.13.640 Child fatality reviews. (1)(a) The department shall conduct a child fatality review in the event of a fatality suspected to be caused by child abuse or neglect of any minor who is in the care of the department or receiving services described in this chapter or who has been in the care of the department or received services described in this chapter within one year preceding the minor's death.

(b) The department shall consult with the office of the family and children's ombuds to determine if a child fatality review should be conducted in any case in which it cannot be determined whether the child's death is the result of suspected child abuse or neglect.

(c) The department shall ensure that the fatality review team is made up of individuals who had no previous involvement in the case, including individuals whose professional expertise is pertinent to the dynamics of the case.

(d) Upon conclusion of a child fatality review required pursuant to this section, the department shall within one hundred eighty days following the fatality issue a report on the results of the review, unless an extension has been granted by the governor. Reports must be distributed to the appropriate committees of the legislature, and the department shall create a public web site where all child fatality review reports required under this section must be posted and maintained. A child fatality review report completed pursuant to this section is subject to public disclosure and must be posted on the public web site, except that confidential information may be redacted by the department consistent with the requirements of RCW 13.50.100, 68.50.105, 74.13.500 through 74.13.525, chapter 42.56 RCW, and other applicable state and federal laws.

(e) The department shall develop and implement procedures to carry out the requirements of this section.

(2)(a) In the event of a near fatality of a child who is in the care of or receiving services described in this chapter from the department or who has been in the care of or received services described in this chapter from the department within one year preceding the near fatality, the department shall promptly notify the office of the family and children's ombuds. The department may conduct a review of the near fatality at its discretion or at the request of the office of the family and children's ombuds.

(b) In the event of a near fatality of a child who is in the care of or receiving services described in this chapter from the department or who has been in the care of or received services described in this chapter from the department within three months preceding the near fatality, or was the subject of an investigation by the department for possible abuse or neglect, the department shall promptly notify the office of the family and children's ombuds and the department shall conduct a review of the near fatality.

(c) "Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition.

(3) In any review of a child fatality or near fatality in which the child was placed with or received services from an agency pursuant to a contract with the department, the department and the fatality review team shall have access to all records and files regarding the child or otherwise relevant to the review that have been produced or retained by the agency.

(4)(a) A child fatality or near 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) A department employee responsible for conducting a child fatality or near fatality review, or member of a child

fatality or near fatality review team, may not be examined in a civil or administrative proceeding regarding (i) the work of the child fatality or near fatality review team, (ii) the incident under review, (iii) his or her statements, deliberations, thoughts, analyses, or impressions relating to the work of the child fatality or near fatality review team or the incident under review, or (iv) the statements, deliberations, thoughts, analyses, or impressions of any other member of the child fatality or near fatality review team, or any person who provided information to the child fatality or near fatality review team, relating to the work of the child fatality or near fatality review team or the incident under review.

(c) Documents prepared by or for a child fatality or near 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 a child fatality or near fatality review, or that is created independently of such review, does not become inadmissible merely because it is reviewed or used by a child fatality or near 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 a child fatality or near fatality review, but if called as a witness, a person may not be examined regarding the person's interactions with the child fatality or near 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 a minor's death or near fatality reviewed by a child fatality or near fatality review team. [2018 c 284 § 62; 2015 c 298 § 1; 2013 c 23 § 209; 2011 c 61 § 2; 2009 c 520 § 91; 2008 c 211 § 1; 2004 c 36 § 1.]

Short title—2015 c 298: See note following RCW 26.44.290.

74.13.650 Foster parent critical support and retention program. A foster parent critical support and retention program is established to retain foster parents who care for sexually reactive children, physically assaultive children, or children with other high-risk behaviors, as defined in RCW 74.13.280. Services shall consist of short-term therapeutic and educational interventions to support the stability of the placement. The department shall enter into performance-based contracts with agencies to provide this program. [2018 c 284 § 63; 2009 c 520 § 92; 2007 c 220 § 7; 2006 c 353 § 2.]

Findings—2006 c 353: "The legislature finds that:

(1) Foster parents are able to successfully maintain placements of sexually reactive children, physically assaultive children, or children with other high-risk behaviors when they are provided with proper training and support. Lack of support contributes to placement disruptions and multiple moves between foster homes.

(2) Young children who have experienced repeated early abuse and trauma are at high risk for behavior later in life that is sexually deviant, if left untreated. Placement with a well-trained, prepared, and supported foster family can break this cycle." [2006 c 353 § 1.]

74.13.660 Foster parent critical support and retention program—Availability, assessment, training, referral. Under the foster parent critical support and retention program, foster parents who care for sexually reactive children, physically assaultive children, or children with other high-risk behaviors, as defined in RCW 74.13.280, shall receive:

(1) Availability at any time of the day or night to address specific concerns related to the identified child;

(2) Assessment of risk and development of a safety and supervision plan;

(3) Home-based foster parent training utilizing evidence-based models; and

(4) Referral to relevant community services and training provided by the local department office or community agencies. [2018 c 58 § 57; 2007 c 220 § 8; 2006 c 353 § 3.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

Findings—2006 c 353: See note following RCW 74.13.650.

74.13.670 Care provider immunity for allegation of failure to supervise a sexually reactive, physically assaultive, or physically aggressive youth—Conditions. (1) A care provider may not be found to have abused or neglected a child under chapter 26.44 RCW or be denied a license pursuant to chapter 74.15 RCW and RCW 74.13.031 for any allegations of failure to supervise in which:

(a) The allegations arise from the child's conduct that is substantially similar to prior behavior of the child, and:

(i) The child is a sexually reactive youth, exhibits high-risk behaviors, or is physically assaultive or physically aggressive as defined in RCW 74.13.280, and this information and the child's prior behavior was not disclosed to the care provider as required by RCW 74.13.280; and

(ii) The care provider did not know or have reason to know that the child needed supervision as a sexually reactive or physically assaultive or physically aggressive youth, or because of a documented history of high-risk behaviors, as a result of the care provider's involvement with or independent knowledge of the child or training and experience; or

(b) The child was not within the reasonable control of the care provider at the time of the incident that is the subject of the allegation, and the care provider was acting in good faith and did not know or have reason to know that reasonable control or supervision of the child was necessary to prevent harm or risk of harm to the child or other persons.

(2) Allegations of child abuse or neglect that meet the provisions of this section shall be designated as "unfounded" as defined in RCW 26.44.020. [2009 c 520 § 93; 2007 c 220 § 5.]

74.13.680 Foster care to twenty-one program—Termination. (1) Within amounts appropriated for this specific purpose, the department shall continue to operate the state-funded foster care to twenty-one program for three years after June 7, 2012, at which point the program shall cease to operate.

(2) The department shall not have the authority to enroll any new youth under this program after June 7, 2012, and shall only serve eligible youth enrolled prior to that date.

(3) The purpose of the foster care to twenty-one program is to serve youth ages eighteen to twenty-one who are

enrolled and participating in a postsecondary academic or postsecondary vocational program.

(4) A youth participating in this program may, within amounts appropriated for this specific purpose, continue to receive placement services until the youth reaches his or her twenty-first birthday or is no longer enrolled in and participating in a postsecondary program, whichever is earlier. [2012 c 52 § 3; 2011 c 330 § 8.]

Intent—2012 c 52: See note following RCW 74.13.031.

Intent—2011 c 330: See note following RCW 13.04.011.

74.13.690 Child welfare measurements. (1) A university-based child welfare research entity and the department, in collaboration with other stakeholders, shall develop measurements in the areas of safety, permanency, and well-being, using existing and available data. Measurements must be calculated from data used in the routine work of the state agencies' data and information technology departments. Any new record linkage or data-matching activities required in fulfillment of this section may be performed by the research entity pursuant to agreements developed under subsection (6) of this section.

(2) For the purposes of this section, "state agencies" means any agency or subagency providing data used in the integrated client database maintained by the research and data analysis division of the department. Any exchange of data must be in accordance with applicable federal and state law.

(3) All measurements must use a methodology accepted by the scientific community. All measurements must address any disproportionate racial and ethnic inequality. The initial measurements must be developed by December 1, 2013.

(4) The measurements may not require the state agencies to revise their data collection systems, and may not require the state agencies to provide individually identifiable information.

(5) The state agencies shall provide the research entity with all measurement data related to the measurements developed under this section at least quarterly beginning July 1, 2014. The research entity shall make any nonidentifiable data publicly available. The research entity shall report on the data to the legislature and the governor annually starting December 31, 2014.

(6) By January 1, 2014, the state agencies shall execute agreements with the research entity to enable sharing of data pursuant to RCW 42.48.020 sufficient to comply with this section.

(7) The fact that the research entity has chosen to use a specific measure, use a specific baseline, or compare any measure to a baseline is not admissible as evidence of negligence by the department in a civil action. [2013 c 205 § 2.]

Findings—Reports—2013 c 205: "(1) The legislature recognizes that the goals of the child welfare system are to protect the safety, permanence, and well-being of the children it serves. The legislature further recognizes the importance of maintaining publicly accessible data that tracks the performance of the child welfare system, leading to transparency and public understanding of the system.

(2) The legislature believes it is important to measure safety, permanence, and well-being such that the public and the legislature may understand how the child welfare system is performing. This information will also serve the legislature in determining priorities for investment of public dollars as well as need for substantive legislative changes to facilitate improvement.

(3) The reports to the legislature under section 2 of this act will be used to provide feedback to the department of social and health services. The agencies referenced in section 2 of this act will not disclose individually identifiable private information except as allowable under federal and state law." [2013 c 205 § 1.]

74.13.695 Validated tool to assess care needs. The office of innovation, alignment, and accountability must develop a single validated tool to assess the care needs of foster children. Once the validated tool is available for use on a statewide basis, the department of children, youth, and families must use the tool for assessing the care needs of foster children, including but not limited to whether the department should provide foster children with behavioral rehabilitation services. The department must notify the caseload forecast council, the office of financial management, and the appropriate fiscal committees of the legislature when it begins statewide use of the validated tool. [2018 c 208 § 3.]

74.13.700 Denial or delay of licensure or approval of unsupervised access to children. (1) In determining the character, suitability, and competence of an individual, the department may not:

(a) Deny or delay a license or approval of unsupervised access to children to an individual solely because of a crime or civil infraction involving the individual or entity revealed in the background check process that does not fall within the categories of disqualifying crimes described in the adoption and safe families act of 1997 or does not relate directly to child safety, permanence, or well-being; or

(b) Delay the issuance of a license or approval of unsupervised access to children by requiring the individual to obtain records relating to a crime or civil infraction revealed in the background check process that does not fall within the categories of disqualifying crimes described in the adoption and safe families act of 1997 or does not relate directly to child safety, permanence, or well-being.

(2) If the department determines that an individual does not possess the character, suitability, or competence to provide care or have unsupervised access to a child, it must provide the reasons for its decision in writing with copies of the records or documents related to its decision to the individual within ten days of making the decision.

(3) For purposes of this section, "individual" means a relative as defined in RCW 74.15.020(2)(a), an "other suitable person" under chapter 13.34 RCW, a person pursuing licensing as a foster parent, or a person employed or seeking employment by a business or organization licensed by the department or with whom the department has a contract to provide care, supervision, case management, or treatment of children in the care of the department. "Individual" does not include long-term care workers defined in *RCW 74.39A.009(17)(a) whose background checks are conducted as provided in RCW 74.39A.056.

(4) The department or its officers, agents, or employees may not be held civilly liable based upon its decision to grant or deny unsupervised access to children if the background information it relied upon at the time the decision was made did not indicate that child safety, permanence, or well-being would be a concern. [2014 c 88 § 4; 2013 c 162 § 2.]

***Reviser's note:** RCW 74.39A.009 was amended by 2018 c 278 § 2, changing subsection (17)(a) to subsection (20)(a).

Findings—2013 c 162: "The legislature recognizes that the goals of the child welfare system are the safety, permanence, and well-being of the children it serves. The legislature further recognizes the importance of background checks conducted by the department of social and health services to assess an individual's character, suitability, and competence to determine whether an individual is appropriate to be provided a license under chapter 74.13 RCW or have unsupervised access to children. The legislature does not intend to change the current secretary of social and health services' list of crimes and negative actions. However, the legislature believes that either an unreasonable delay in a determination of whether to approve or deny a license under chapter 74.13 RCW or unsupervised access to children, when such unreasonable delay or denial is based solely on a crime or civil infraction not directly related to child safety, is not appropriate and is not in the best interest of the children being served by the child welfare system." [2013 c 162 § 1.]

Rules—2013 c 162: "The department of social and health services shall adopt all necessary rules to implement this act." [2013 c 162 § 8.]

74.13.705 Background checks—Out-of-state requests—Fees. The department shall charge a fee to process a request made by a person in another state for an individual's child abuse or neglect history in this state or other background history on the individual possessed by the department. All proceeds from the fees collected must go directly to aiding the cost associated with the department conducting background checks. [2013 c 162 § 3.]

Findings—Rules—2013 c 162: See notes following RCW 74.13.700.

74.13.710 Out-of-home care—Childhood activities—Prudent parent standard. (1) For the purposes of this section, "caregiver" means a person with whom a child is placed in out-of-home care, or a designated official for a group care facility licensed by the department.

(2) This section applies to all caregivers providing for children in out-of-home care.

(3) Caregivers have the authority to provide or withhold permission without prior approval of the caseworker, department, or court to allow a child in their care to participate in normal childhood activities based on a reasonable and prudent parent standard.

(a) Normal childhood activities include, but are not limited to, extracurricular, enrichment, and social activities, and may include overnight activities outside the direct supervision of the caregiver for periods of over twenty-four hours and up to seventy-two hours.

(b) The reasonable and prudent parent standard means the standard of care used by a caregiver in determining whether to allow a child in his or her care to participate in extracurricular, enrichment, and social activities. This standard is characterized by careful and thoughtful parental decision making that is intended to maintain a child's health, safety, and best interest while encouraging the child's emotional and developmental growth.

(4) Any authorization provided under this section must comply with provisions included in an existing safety plan established by the department or court order.

(5)(a) Caseworkers shall discuss the child's interest in and pursuit of normal childhood activities in their monthly health and safety visits and describe the child's participation in normal childhood activities in the individual service and safety plan.

(b) Caseworkers shall also review a child's interest in and pursuit of normal childhood activities during monthly meetings with parents. Caseworkers shall communicate the opinions of parents regarding their child's participation in normal childhood activities so that the parents' wishes may be appropriately considered.

(6) Neither the caregiver nor the department may be held liable for injuries to the child that occur as a result of authority granted in this section unless the action or inaction of the caregiver or the department resulting in injury constitutes willful or wanton misconduct.

(7) This section does not remove or limit any existing liability protection afforded by law. [2014 c 104 § 1.]

74.13.801 Traumatic brain injury screening tools for youth in out-of-home care—Report to legislature. ***(Expires July 1, 2020.)*** (1) The department, in consultation with the health plan contracted to provide health care coverage to foster youth, shall evaluate:

(a) Traumatic brain injury screening tools that could be used with children entering out-of-home care as defined under RCW 13.34.030 and the evidence base for such tools;

(b) Options to include traumatic brain injury screening tools in existing screens or regular health care appointments for children in out-of-home care as defined under RCW 13.34.030; and

(c) The recommended treatment actions based on health care, behavioral health care, and trauma-related best practices for youth for whom a potential traumatic brain injury is identified using a screening tool.

(2) By December 1, 2019, and in compliance with RCW 43.01.036, the department shall provide a report based on the requirements in this section to the appropriate committees of the legislature.

(3) This section expires July 1, 2020. [2019 c 120 § 1.]

74.13.802 Child welfare housing assistance pilot program. ***(Expires June 30, 2022.)*** (1) Beginning July 1, 2020, the department shall establish a child welfare housing assistance pilot program, which provides housing vouchers, rental assistance, navigation, and other support services to eligible families.

(a) The department shall operate or contract for the operation of the child welfare housing assistance pilot program under subsection (3) of this section in one county west of the crest of the Cascade mountain range and one county east of the crest of the Cascade mountain range.

(b) The child welfare housing assistance pilot program is intended to shorten the time that children remain in out-of-home care.

(2) A parent with a child who is dependent pursuant to chapter 13.34 RCW and whose primary remaining barrier to reunification is the lack of appropriate housing is eligible for the child welfare housing assistance pilot program.

(3) The department shall contract with an outside entity or entities to operate the child welfare housing assistance pilot program. If no outside entity or entities are available to operate the program or specific parts of the program, the department may operate the program or the specific parts that are not operated by an outside entity.

(4) Families may be referred to the child welfare housing assistance pilot program by a caseworker, an attorney, a guardian ad litem as defined in chapter 13.34 RCW, a child

welfare parent mentor as defined in RCW 2.70.060, an office of public defense social worker, or the court.

(5) The department shall consult with a stakeholder group that must include, but is not limited to, the following:

(a) Parent allies;

(b) Parent attorneys and social workers managed by the office of public defense parent representation program;

(c) The department of commerce;

(d) Housing experts;

(e) Community-based organizations;

(f) Advocates; and

(g) Behavioral health providers.

(6) The stakeholder group established in subsection (5) of this section shall begin meeting after July 28, 2019, and assist the department in design of the child welfare housing assistance pilot program in areas including, but not limited to:

(a) Equitable racial, geographic, ethnic, and gender distribution of program support;

(b) Eligibility criteria;

(c) Creating a definition of homeless for purposes of eligibility for the program; and

(d) Options for program design that include outside entities operating the entire program or specific parts of the program.

(7) By December 1, 2021, the department shall report outcomes for the child welfare housing assistance pilot program to the oversight board for children, youth, and families established pursuant to RCW 43.216.015. The report must include racial, geographic, ethnic, and gender distribution of program support.

(8) The child welfare housing assistance pilot program established in this section is subject to the availability of funds appropriated for this purpose.

(9) This section expires June 30, 2022. [2019 c 328 § 1.]

74.13.901 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. Nothing in chapter 521, Laws of 2009 shall be construed as creating or requiring the creation of any medical assistance program, as that term is defined in RCW 74.09.010, for state registered domestic partners that is analogous to federal medical assistance programs extended to married persons. [2009 c 521 § 177.]

74.13.902 Construction—Religious or nonprofit organizations. Nothing contained in chapter 3, Laws of 2012 shall be construed to alter or affect existing law regarding the manner in which a religious or nonprofit organization may be licensed to and provide adoption, foster care, or other child-placing services under this chapter or chapter 74.15 or 26.33 RCW. [2012 c 3 § 15 (Referendum Measure No. 74, approved November 6, 2012).]

Notice—2012 c 3: See note following RCW 26.04.010.

74.13.903 Construction—Prevention services. Nothing in this chapter may be construed to limit the department's authority to offer or provide prevention services or primary prevention services as defined in chapter 13.34 RCW and this chapter, respectively. [2019 c 172 § 18.]

Chapter 74.13A RCW
ADOPTION SUPPORT

Sections

74.13A.005 Adoption support—State policy enunciated. It is the policy of this state to enable the secretary to charge fees for certain services to adoptive parents who are able to pay for such services.

It is, however, also the policy of this state that the secretary of the department shall be liberal in waiving, reducing, or deferring payment of any such fee to the end that adoptions shall be encouraged in cases where prospective adoptive parents lack means.

It is the policy of this state to encourage, within the limits of available funds, the adoption of certain hard to place children in order to make it possible for children living in, or

likely to be placed in, foster homes or institutions to benefit from the stability and security of permanent homes in which such children can receive continuous parental care, guidance, protection, and love and to reduce the number of such children who must be placed or remain in foster homes or institutions until they become adults.

It is also the policy of this state to try, by means of the program of adoption support authorized in RCW 26.33.320 and 74.13A.005 through 74.13A.080, to reduce the total cost to the state of foster home and institutional care. [2018 c 58 § 73; 1985 c 7 § 133; 1971 ex.s. c 63 § 1. Formerly RCW 74.13.100.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

74.13A.007 Adoption support expenditures—Findings—Intent. The legislature finds that the current state adoption support policy to encourage, within available funds, the adoption of certain hard to place children, has expedited permanency for children who are unable to reunify with their family and has resulted in savings otherwise spent on foster care.

The legislature also finds that current economic conditions have reduced state funds available for many critical programs. The legislature further finds that adoption support expenditures continue to increase. Given these realities, the legislature finds there is a need to control adoption support costs without adversely impacting permanency for state dependent children.

The legislature acknowledges that the best way to reduce adoption support and foster care expenditures is to safely prevent children from entering the foster care system. However, the legislature also finds that the recent prospective reduction to adoption support payments set forth in chapter 50, Laws of 2011 1st sp. sess. has not, to date, adversely impacted permanency for foster children in need of adoptive homes.

Therefore, the legislature intends to continue the adoption assistance rate reduction beyond the period set forth in the operating budget, while focusing on sustainable long-term efforts to prevent children from entering the foster care system, such as pursuing a potential federal Title IV-E waiver, which if granted, would allow Washington to reinvest dollars otherwise spent on foster care in prevention programs.

The legislature also finds that many adoptive parents spend adoption support payments on additional mental health services for adoptive children that are not currently covered by existing public programs. The legislature intends to offset adoption support payment expenditures by facilitating efforts to improve the access and quality of existing mental health services for adoptive families in the long term. [2012 c 147 § 1.]

74.13A.010 Prospective adoptive parent's fee for cost of adoption services. When a child proposed for adoption is placed with a prospective adoptive parent the department may charge such parent a fee in payment or part payment of such adoptive parent's part of the cost of the adoption services rendered and to be rendered by the department.

In charging such fees the department shall treat a husband and wife as a single prospective adoptive parent.

Each such fee shall be fixed according to a sliding scale based on the ability to pay of the prospective adoptive parent or parents.

Such fee scale shall be annually fixed by the secretary after considering the recommendations of the committee designated by the secretary to advise him or her on child welfare and pursuant to the regulations to be issued by the secretary in accordance with the provisions of Title 34 RCW.

The secretary may waive, defer, or provide for payment in installments without interest of, any such fee whenever in his or her judgment payment or immediate payment would cause economic hardship to such adoptive parent or parents.

Nothing in this section shall require the payment of a fee to the state of Washington in a case in which an adoption results from independent placement or placement by a licensed child-placing or supervising agency. [2009 c 520 § 64; 1971 ex.s. c 63 § 2. Formerly RCW 74.13.103.]

74.13A.015 Adoption services—Disposition of fees—Use—Federal funds—Gifts and grants. All fees paid for adoption services pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 shall be credited to the general fund. Expenses incurred in connection with supporting the adoption of hard to place children shall be paid by warrants drawn against such appropriations as may be available. The secretary may for such purposes, contract with any public agency or supervising agency and/or adoptive parent and is authorized to accept funds from other sources including federal, private, and other public funding sources to carry out such purposes.

The secretary shall actively seek, where consistent with the policies and programs of the department, and shall make maximum use of, such federal funds as are or may be made available to the department for the purpose of supporting the adoption of hard to place children. The secretary may, if permitted by federal law, deposit federal funds for adoption support, aid to adoptions, or subsidized adoption in the general fund and may use such funds, subject to such limitations as may be imposed by federal or state law, to carry out the program of adoption support authorized by RCW 26.33.320 and 74.13A.005 through 74.13A.080. [2009 c 520 § 65; 1985 c 7 § 134; 1979 ex.s. c 67 § 7; 1975 c 53 § 1; 1973 c 61 § 1; 1971 ex.s. c 63 § 3. Formerly RCW 74.13.106.]

Additional notes found at www.leg.wa.gov

74.13A.020 Adoption support program administration—Rules and regulations—Disbursements from general fund, criteria—Limits. (1) The secretary shall issue rules and regulations to assist in the administration of the program of adoption support authorized by RCW 26.33.320 and 74.13A.005 through 74.13A.080.

(2) Disbursements from the appropriations available from the general fund shall be made pursuant to such rules and regulations and pursuant to agreements conforming thereto to be made by the secretary with parents for the purpose of supporting the adoption of children in, or likely to be placed in, foster homes or child caring institutions who are found by the secretary to be difficult to place in adoption because of physical or other reasons; including, but not limited to, physical or mental handicap, emotional disturbance,

ethnic background, language, race, color, age, or sibling grouping.

(3) Such agreements shall meet the following criteria:

(a) The child whose adoption is to be supported pursuant to such agreement shall be or have been a child hard to place in adoption.

(b) Such agreement must relate to a child who was or is residing in a foster home or child-caring institution or a child who, in the judgment of the secretary, is both eligible for, and likely to be placed in, either a foster home or a child-caring institution.

(c) Such agreement shall provide that adoption support shall not continue beyond the time that the adopted child reaches eighteen years of age, becomes emancipated, dies, or otherwise ceases to need support. If the secretary finds that continuing dependency of such child after such child reaches eighteen years of age warrants the continuation of support pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 the secretary may do so, subject to all the provisions of RCW 26.33.320 and 74.13A.005 through 74.13A.080, including annual review of the amount of such support.

(d) Any prospective parent who is to be a party to such agreement shall be a person who has the character, judgment, sense of responsibility, and disposition which make him or her suitable as an adoptive parent of such child.

(4) At least six months before an adoption is finalized under chapter 26.33 RCW and *RCW 74.13.100 through 74.13.145, the department must provide to the prospective adoptive parent, in writing, information describing the limits of the adoption support program including the following information:

(a) The limits on monthly cash payments to adoptive families;

(b) The limits on the availability of children's mental health services and the funds with which to pay for these services;

(c) The process for accessing mental health services for children receiving adoption support services;

(d) The limits on the one-time cash payments to adoptive families for expenses related to their adopted children; and

(e) That payment for residential or group care is not available for adopted children under the adoption support program. [2009 c 520 § 66; 2009 c 491 § 9; 1990 c 285 § 7; 1985 c 7 § 135; 1982 c 118 § 4; 1979 ex.s. c 67 § 8; 1971 ex.s. c 63 § 4. Formerly RCW 74.13.109.]

Reviser's note: *(1) RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

(2) This section was amended by 2009 c 491 § 9 and by 2009 c 520 § 66, 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).

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

Additional notes found at www.leg.wa.gov

74.13A.025 Factors determining payments or adjustment in standards. The factors to be considered by the secretary in setting the amount of any payment or payments to be made pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 and in adjusting standards hereunder shall include: The size of the family including the adoptive child, the usual living expenses of the family, the special needs of any family member including education needs, the family income, the family resources and plan for savings, the medical and hospitalization needs of the family, the family's means of purchasing or otherwise receiving such care, and any other expenses likely to be needed by the child to be adopted. In setting the amount of any initial payment made pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080, the secretary is authorized to establish maximum payment amounts that are reasonable and allow permanency planning goals related to adoption of children under RCW 13.34.145 to be achieved at the earliest possible date. To encourage adoption of children between the ages of fourteen and eighteen, and in particular those children between the ages of fourteen and eighteen who are hard to place for adoption, the secretary is authorized to include as part of any new negotiated adoption agreement executed after October 19, 2017, continued eligibility for the Washington college bound scholarship pursuant to RCW 28B.118.010.

The amounts paid for the support of a child pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 may vary from family to family and from year to year. Due to changes in economic circumstances or the needs of the child such payments may be discontinued and later resumed.

Payments under RCW 26.33.320 and 74.13A.005 through 74.13A.080 may be continued by the secretary subject to review as provided for herein, if such parent or parents having such child in their custody establish their residence in another state or a foreign jurisdiction.

In fixing the standards to govern the amount and character of payments to be made for the support of adopted children pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 and before issuing rules and regulations to carry out the provisions of RCW 26.33.320 and 74.13A.005 through 74.13A.080, the secretary shall consider the comments and recommendations of the committee designated by the secretary to advise him or her with respect to child welfare. [2017 3rd sp.s. c 20 § 8; 2013 c 23 § 210; 1996 c 130 § 1; 1985 c 7 § 136; 1971 ex.s. c 63 § 5. Formerly RCW 74.13.112.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

74.13A.030 Both continuing payments and lump sum payments authorized. To carry out the program authorized by RCW 26.33.320 and 74.13A.005 through 74.13A.080, the secretary may make continuing payments or lump sum payments of adoption support. In lieu of continuing payments, or in addition to them, the secretary may make one or more specific lump sum payments for or on behalf of a hard to place child either to the adoptive parents or directly to other persons to assist in correcting any condition causing such child to be hard to place for adoption.

Consistent with a particular child's needs, continuing adoption support payments shall include, if necessary to facilitate or support the adoption of a special needs child, an amount sufficient to remove any reasonable financial barrier to adoption as determined by the secretary under RCW 74.13A.025.

After determination by the secretary of the amount of a payment or the initial amount of continuing payments, the prospective parent or parents who desire such support shall sign an agreement with the secretary providing for the payment, in the manner and at the time or times prescribed in regulations to be issued by the secretary subject to the provisions of RCW 26.33.320 and 74.13A.005 through 74.13A.080, of the amount or amounts of support so determined.

Payments shall be subject to review as provided in RCW 26.33.320 and 74.13A.005 through 74.13A.080. [2017 3rd sp.s. c 20 § 9; 1996 c 130 § 2; 1985 c 7 § 137; 1971 ex.s. c 63 § 6. Formerly RCW 74.13.115.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

74.13A.035 Application—1996 c 130. Chapter 130, Laws of 1996 applies to adoption support payments for eligible children whose eligibility is determined on or after July 1, 1996. Chapter 130, Laws of 1996 does not apply retroactively to current recipients of adoption support payments. [1996 c 130 § 3. Formerly RCW 74.13.116.]

74.13A.040 Review of support payments. (1) Any parent who is a party to an agreement under RCW 74.13A.005 through 74.13A.080 may at any time, in writing, request, for reasons set forth in such request, a review of the amount of any payment or the level of continuing payments. The review shall begin not later than thirty days from the receipt of such request. Any adjustment may be made retroactive to the date such request was received by the secretary. If such request is not acted on within thirty days after it has been received by the secretary, such parent may invoke his or her rights under the hearing provisions set forth in RCW 74.13A.055.

(2) The secretary may make adjustments in payments at the time of the review, or at other times, if the secretary finds that circumstances have changed and warrant an adjustment in payments. Changes in circumstances may include, but are not limited to, variations in medical opinions, prognosis, and costs. Appropriate adjustments in payments shall be made based upon changes in the needs of the child and/or changes in the adoptive parents' income, resources, and expenses for the care of such child or other members of the family, including medical and/or hospitalization expense not otherwise covered by or subject to reimbursement from insurance or other sources of financial assistance. [2013 c 23 § 211; 2009 c 527 § 1; 1995 c 270 § 2; 1985 c 7 § 138; 1971 ex.s. c 63 § 7. Formerly RCW 74.13.118.]

Finding—1995 c 270: "The legislature finds that it is in the best interest of the people of the state of Washington to support the adoption process in a variety of ways, including easing administrative burdens on adoptive parents receiving financial support, providing finality for adoptive placements and stable homes for children, and not delaying adoptions." [1995 c 270 § 1.]

74.13A.045 Adoptive parent's financial information. So long as any adoptive parent is receiving support pursuant to RCW 26.33.320 and *74.13.100 through 74.13.145 he or she shall, upon request, file with the secretary a copy of his or her federal income tax return. Such return and any information thereon shall be marked by the secretary "confidential", shall be used by the secretary solely for the purposes of RCW 26.33.320 and *74.13.100 through 74.13.145, and shall not be revealed to any other person, institution or agency, public or private, including agencies of the United States government, other than a superior court, judge or commissioner before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and *74.13.100 through 74.13.145 is then pending.

In carrying on the review process authorized by RCW 26.33.320 and *74.13.100 through 74.13.145 the secretary may require the adoptive parent or parents to disclose such additional financial information, not privileged, as may enable him or her to make determinations and adjustments in support to the end that the purposes and policies of this state expressed in *RCW 74.13.100 may be carried out, provided that no adoptive parent or parents shall be obliged, by virtue of this section, to sign any agreement or other writing waiving any constitutional right or privilege nor to admit to his or her home any agent, employee, or official of any department of this state, or of the United States government.

Such information shall be marked "confidential" by the secretary, shall be used by him or her solely for the purposes of RCW 26.33.320 and *74.13.100 through 74.13.145, and shall not be revealed to any other person, institution, or agency, public or private, including agencies of the United States government other than a superior court judge or commission before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and *74.13.100 through 74.13.145 is then pending. [1995 c 270 § 3; 1985 c 7 § 139; 1971 ex.s. c 63 § 8. Formerly RCW 74.13.121.]

***Reviser's note:** RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

Finding—1995 c 270: See note following RCW 74.13A.040.

74.13A.047 Adoption assistance payments—Expenditure limits. (1) To ensure expenditures continue to remain within available funds as required by RCW 74.13A.005 and 74.13A.020, the secretary shall not set the amount of any adoption assistance payment or payments, made pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080, to more than eighty percent of the foster care maintenance payment for that child had he or she remained in a foster family home during the same period. This subsection applies prospectively to adoption assistance agreements established on or after July 1, 2013, through June 30, 2017.

(2)(a) To ensure expenditures continue to remain within available funds as required by RCW 74.13A.005 and 74.13A.020, the secretary shall not set the amount of any adoption assistance payment or payments, made pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080, to more than the following:

(i) For a child under the age of five, no more than eighty percent of the foster care maintenance payment for that child had he or she remained in a foster family home during the same period.

(ii) For a child aged five through nine, no more than ninety percent of the foster care maintenance payment for that child had he or she remained in a foster family home during the same period.

(iii) For a child aged ten through eighteen, no more than ninety-five percent of the foster care maintenance payment for that child had he or she remained in a foster family home during the same period.

(b) This subsection applies prospectively to adoption assistance agreements established on or after October 19, 2017.

(3) The department must establish a central unit of adoption support negotiators to help ensure consistent negotiation of adoption support agreements that will balance the needs of adoptive families with the state's need to remain fiscally responsible.

(4) The department must request, in writing, that adoptive families with existing adoption support contracts renegotiate their contracts to establish lower adoption assistance payments if it is fiscally feasible for the family to do so. The department shall explain that adoption support contracts may be renegotiated as needs arise. [2017 3rd sp.s. c 20 § 10; 2012 c 147 § 2.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

74.13A.050 Agreements as contracts within state and federal Constitutions—State's continuing obligation. An agreement for adoption support made before January 1, 1985, or pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080, although subject to review and adjustment as provided for herein, shall, as to the standard used by the secretary in making such review or reviews and any such adjustment, constitutes a contract within the meaning of section 10, Article I of the United States Constitution and section 23, Article I of the state Constitution. For that reason once such an agreement has been made any review of and adjustment under such agreement shall as to the standards used by the secretary, be made only subject to the provisions of RCW 26.33.320 and 74.13A.005 through 74.13A.080 and such rules and regulations relating thereto as they exist on the date of the initial determination in connection with such agreement or such more generous standard or parts of such standard as may hereafter be provided for by law or regulation. Once made such an agreement shall constitute a solemn undertaking by the state of Washington with such adoptive parent or parents. The termination of the effective period of RCW 26.33.320 and 74.13A.005 through 74.13A.080 or a decision by the state or federal government to discontinue or reduce general appropriations made available for the purposes to be served by RCW 26.33.320 and 74.13A.005 through 74.13A.080, shall not affect the state's specific continuing obligations to support such adoptions, subject to such annual review and adjustment for all such agreements as have theretofore been entered into by the state.

The purpose of this section is to assure any such parent that, upon his or her consenting to assume the burdens of adopting a hard to place child, the state will not in future so act by way of general reduction of appropriations for the program authorized by RCW 26.33.320 and 74.13A.005 through 74.13A.080 or ratable reductions, to impair the trust and confidence necessarily reposed by such parent in the state as a condition of such parent taking upon himself or herself the obligations of parenthood of a difficult to place child.

Should the secretary and any such adoptive parent differ as to whether any standard or part of a standard adopted by the secretary after the date of an initial agreement, which standard or part is used by the secretary in making any review and adjustment, is more generous than the standard in effect as of the date of the initial determination with respect to such agreement such adoptive parent may invoke his or her rights, including all rights of appeal under the fair hearing provisions, available to him or her under RCW 74.13A.055. [2009 c 520 § 67; 1985 c 7 § 140; 1971 ex.s. c 63 § 9. Formerly RCW 74.13.124.]

74.13A.055 Voluntary amendments to agreements—Procedure when adoptive parties disagree. Voluntary amendments of any support agreement entered into pursuant to RCW 26.33.320 and *74.13.100 through 74.13.145 may be made at any time. In proposing any such amending action which relates to the amount or level of a payment or payments, the secretary shall, as provided in **RCW 74.13.124, use either the standard which existed as of the date of the initial determination with respect to such agreement or any subsequent standard or parts of such standard which both parties to such agreement agree is more generous than those in effect as of the date of such initial agreement. If the parties do not agree to the level of support, the secretary shall set the level. The secretary shall give the adoptive parent or parents written notice of the determination. The adoptive parent or parents aggrieved by the secretary's determination have the right to an adjudicative proceeding. The proceeding is governed by RCW 74.08.080 and chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 148; 1985 c 7 § 141; 1971 ex.s. c 63 § 10. Formerly RCW 74.13.127.]

Reviser's note: *(1) RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

**(2) RCW 74.13.124 was recodified as RCW 74.13A.050 pursuant to 2009 c 520 § 95.

Additional notes found at www.leg.wa.gov

74.13A.060 Nonrecurring adoption expenses. The secretary may authorize the payment, from the appropriations available from the general fund, of all or part of the nonrecurring adoption expenses incurred by a prospective parent. "Nonrecurring adoption expenses" means those expenses incurred by a prospective parent in connection with the adoption of a difficult to place child including, but not limited to, attorneys' fees, court costs, and agency fees. Payment shall be made in accordance with rules adopted by the department. [2017 3rd sp.s. c 6 § 502; 1990 c 285 § 8; 1985 c 7 § 142; 1979 ex.s. c 67 § 9; 1971 ex.s. c 63 § 11. Formerly RCW 74.13.130.]

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.

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

Additional notes found at www.leg.wa.gov

74.13A.065 Records—Confidentiality. The secretary shall keep such general records as are needed to evaluate the effectiveness of the program of adoption support authorized

by RCW 26.33.320 and *74.13.100 through 74.13.145 in encouraging and effectuating the adoption of hard to place children. In so doing the secretary shall, however, maintain the confidentiality required by law with respect to particular adoptions. [1985 c 7 § 143; 1971 ex.s. c 63 § 13. Formerly RCW 74.13.133.]

***Reviser's note:** RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

74.13A.070 Recommendations for support of the adoption of certain children. Any supervising agency or person having a child in foster care or institutional care and wishing to recommend to the secretary support of the adoption of such child as provided for in RCW 26.33.320 and 74.13A.005 through 74.13A.080 may do so, and may include in its or his or her recommendation advice as to the appropriate level of support and any other information likely to assist the secretary in carrying out the functions vested in the secretary by RCW 26.33.320 and 74.13A.005 through 74.13A.080. Such agency may, but is not required to, be retained by the secretary to make the required preplacement study of the prospective adoptive parent or parents. [2009 c 520 § 68; 1985 c 7 § 144; 1971 ex.s. c 63 § 14. Formerly RCW 74.13.136.]

74.13A.075 "Secretary" and "department" defined. As used in RCW 26.33.320 and 74.13A.005 through 74.13A.080 the following definitions shall apply:

(1) "Department" means the department of children, youth, and families.

(2) "Secretary" means the secretary of the department. [2017 3rd sp.s. c 6 § 501; 2013 c 23 § 212; 1985 c 7 § 145; 1971 ex.s. c 63 § 15. Formerly RCW 74.13.139.]

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.

74.13A.080 Short title—1971 act. RCW 26.33.320 and *74.13.100 through 74.13.145 may be known and cited as the "Adoption Support Demonstration Act of 1971". [1985 c 7 § 146; 1971 ex.s. c 63 § 17. Formerly RCW 74.13.145.]

***Reviser's note:** RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

74.13A.085 Adoption support reconsideration program. (1) The department shall establish, within funds appropriated for the purpose, a reconsideration program to provide medical and counseling services through the adoption support program for children of families who apply for services after the adoption is final. Families requesting services through the program shall provide any information requested by the department for the purpose of processing the family's application for services.

(2) A child meeting the eligibility criteria for registration with the program is one who:

(a) Was residing in a preadoptive placement funded by the department or in foster care funded by the department immediately prior to the adoptive placement;

(b) Had a physical or mental handicap or emotional disturbance that existed and was documented prior to the adoption or was at high risk of future physical or mental handicap or emotional disturbance as a result of conditions exposed to prior to the adoption; and

(c) Resides in the state of Washington with an adoptive parent who lacks the necessary financial means to care for the child's special need.

(3) If a family is accepted for registration and meets the criteria in subsection (2) of this section, the department may enter into an agreement for services. Prior to entering into an agreement for services through the program, the medical needs of the child must be reviewed and approved by the department.

(4) Any services provided pursuant to an agreement between a family and the department shall be met from the department's medical program. Such services shall be limited to:

(a) Services provided after finalization of an agreement between a family and the department pursuant to this section;

(b) Services not covered by the family's insurance or other available assistance; and

(c) Services related to the eligible child's identified physical or mental handicap or emotional disturbance that existed prior to the adoption.

(5) Any payment by the department for services provided pursuant to an agreement shall be made directly to the physician or provider of services according to the department's established procedures.

(6) The total costs payable by the department for services provided pursuant to an agreement shall not exceed twenty thousand dollars per child. [2017 3rd sp.s. c 6 § 503; 1997 c 131 § 1; 1990 c 285 § 5. Formerly RCW 74.13.150.]

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.

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

74.13A.090 Interstate agreements for adoption of children with special needs—Findings. The legislature finds that:

(1) Finding adoptive families for children for whom state assistance under *RCW 74.13.100 through 74.13.145 is desirable and assuring the protection of the interest of the children affected during the entire assistance period require special measures when the adoptive parents move to other states or are residents of another state.

(2) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states. [1997 c 31 § 1. Formerly RCW 74.13.152.]

***Reviser's note:** RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

74.13A.095 Interstate agreements for adoption of children with special needs—Purpose. The purposes of *RCW 74.13.152 through 74.13.159 are to:

(1) Authorize the department to enter into interstate agreements with agencies of other states for the protection of

children on behalf of whom adoption assistance is being provided by the department; and

(2) Provide procedures for interstate children's adoption assistance payments, including medical payments. [1997 c 31 § 2. Formerly RCW 74.13.153.]

***Reviser's note:** RCW 74.13.152 through 74.13.159 were recodified as RCW 74.13A.090 through 74.13A.125 pursuant to 2009 c 520 § 95.

74.13A.100 Interstate agreements for adoption of children with special needs—Definitions. The definitions in this section apply throughout *RCW 74.13.152 through 74.13.159 unless the context clearly indicates otherwise.

(1) "Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(2) "Residence state" means the state where the child is living.

(3) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States. [1997 c 31 § 3. Formerly RCW 74.13.154.]

***Reviser's note:** RCW 74.13.152 through 74.13.159 were recodified as RCW 74.13A.090 through 74.13A.125 pursuant to 2009 c 520 § 95.

74.13A.105 Interstate agreements for adoption of children with special needs—Authorization. The department is authorized to develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in *RCW 74.13.152 through 74.13.159. When entered into, and for so long as it remains in force, such a compact has the force and effect of law. [1997 c 31 § 4. Formerly RCW 74.13.155.]

***Reviser's note:** RCW 74.13.152 through 74.13.159 were recodified as RCW 74.13A.090 through 74.13A.125 pursuant to 2009 c 520 § 95.

74.13A.110 Interstate agreements for adoption of children with special needs—Required provisions. A compact entered into pursuant to the authority conferred by *RCW 74.13.152 through 74.13.159 must have the following content:

(1) A provision making it available for joinder by all states;

(2) A provision for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal;

(3) A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who, on the effective date of the withdrawal, are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode;

(4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement that is (a) in writing between the adoptive parents and the state child welfare agency of the state that undertakes to provide the adoption assistance, and (b) expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance; and

(5) Such other provisions as are appropriate to implement the proper administration of the compact. [1997 c 31 § 5. Formerly RCW 74.13.156.]

***Reviser's note:** RCW 74.13.152 through 74.13.159 were recodified as RCW 74.13A.090 through 74.13A.125 pursuant to 2009 c 520 § 95.

74.13A.115 Interstate agreements for adoption of children with special needs—Additional provisions. A compact entered into pursuant to the authority conferred by *RCW 74.13.152 through 74.13.159 may contain provisions in addition to those required under **RCW 74.13.156, as follows:

(1) Provisions establishing procedures and entitlement to medical and other necessary social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs of the services; and

(2) Such other provisions as are appropriate or incidental to the proper administration of the compact. [1997 c 31 § 6. Formerly RCW 74.13.157.]

Reviser's note: *(1) RCW 74.13.152 through 74.13.159 were recodified as RCW 74.13A.090 through 74.13A.125 pursuant to 2009 c 520 § 95.

**(2) RCW 74.13.156 was recodified as RCW 74.13A.110 pursuant to 2009 c 520 § 95.

74.13A.120 Interstate agreements for adoption of children with special needs—Medical assistance for children residing in this state—Penalty for fraudulent claims. (1) A child with special needs who resides in this state and is the subject of an adoption assistance agreement with another state is entitled to receive a medical assistance identification card from this state upon the filing with the department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the medical assistance administration, the adoptive parents are required at least annually to show that the agreement is still in force or has been renewed.

(2) The medical assistance administration shall consider the holder of a medical assistance identification under this section as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims in the same manner and under the same conditions and procedures as for other recipients of medical assistance.

(3) The medical assistance administration shall provide coverage and benefits for a child who is in another state and is covered by an adoption assistance agreement made by the department for the coverage or benefits, if any, not provided by the residence state. Adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state for reimbursement. No reimbursement may be made for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The department shall adopt rules implementing this subsection. The additional coverage and benefit amounts provided under this subsection must be for services to the cost of which there is no federal contribution, or which,

if federally aided, are not provided by the residence state. The rules must include procedures to be followed in obtaining prior approval for services if required for the assistance.

(4) The submission of any claim for payment or reimbursement for services or benefits under this section or the making of any statement that the person knows or should know to be false, misleading, or fraudulent is punishable as perjury under chapter 9A.72 RCW.

(5) This section applies only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provided medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance under an adoption assistance agreement entered into by this state are eligible to receive assistance in accordance with the applicable laws and procedures. [1997 c 31 § 7. Formerly RCW 74.13.158.]

74.13A.125 Interstate agreements for adoption of children with special needs—Adoption assistance and medical assistance in state plan. Consistent with federal law, the department, in connection with the administration of *RCW 74.13.152 through 74.13.158 and any pursuant compact shall include in any state plan made pursuant to the adoption assistance and child welfare act of 1980 (P.L. 96-272), Titles IV(e) and XIX of the social security act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The department shall apply for and administer all relevant federal aid in accordance with law. [1997 c 31 § 8. Formerly RCW 74.13.159.]

***Reviser's note:** RCW 74.13.152 through 74.13.158 were recodified as RCW 74.13A.090 through 74.13A.120 pursuant to 2009 c 520 § 95.

Chapter 74.13B RCW
CHILD WELFARE SYSTEM—CONTRACTING FOR SERVICES

Sections

74.13B.005 Findings—Intent. (1) The legislature finds that:

(a) The state of Washington and several Indian tribes in the state of Washington assume legal responsibility for abused or neglected children when their parents or caregivers are unable or unwilling to adequately provide for their safety, health, and welfare;

(b) Washington state has a strong history of partnership between the department and contracted service providers who currently serve children and families in the child welfare system. The department and its contracted service providers have responsibility for providing services to address parenting deficiencies resulting in child maltreatment, and the needs of children impacted by maltreatment;

(c) Department caseworkers and contracted service providers each play a critical and complementary role in the child welfare system;

(d) The current system of contracting for services needed by children and families in the child welfare system is fragmented, inflexible, and lacks incentives for improving outcomes for children and families.

(2) The legislature intends:

(a) To reform the delivery of certain services to children and families in the child welfare system by creating a flexible, accountable community-based system of care that utilizes performance-based contracting, maximizes the use of evidence-based, research-based, and promising practices, and expands the capacity of community-based agencies to leverage local funding and other resources to benefit children and families served by the department;

(b) To achieve improved child safety, child permanency, including reunification, and child well-being outcomes through the collaborative efforts of the department and contracted service providers and the prioritization of these goals in performance-based contracting; and

(c) To implement performance-based contracting under chapter 205, Laws of 2012 in a manner that supports and complies with the federal and Washington state Indian child welfare act. [2017 3rd sp.s. c 6 § 504; 2012 c 205 § 1.]

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.

74.13B.010 Definitions. For purposes of this chapter:

(1) "Case management" means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child-placing agency" has the same meaning as in RCW 74.15.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

(5) "Department" means the department of children, youth, and families.

(6) "Evidence-based" means a program or practice that is cost-effective and includes at least two randomized or statistically controlled evaluations that have demonstrated improved outcomes for its intended population.

(7) "Network administrator" means an entity that contracts with the department to provide defined services to children and families in the child welfare system through its provider network, as provided in RCW 74.13B.020.

(8) "Performance-based contracting" means structuring all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes and linking payment for services to contractor performance.

(9) "Promising practice" means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

(10) "Provider network" means those service providers who contract with a network administrator to provide services to children and families in the geographic area served by the network administrator.

(11) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices. [2017 3rd sp.s. c 6 § 505; 2012 c 205 § 2.]

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.

74.13B.020 Family support and related services—Performance-based contracting. (1) The department shall enter into performance-based contracts for the provision of family support and related services. The department may enter into performance-based contracts for additional services, other than case management.

(2) It is the goal of the legislature to expand the coverage area of network administrators to encompass the entire state. Recognizing that phased implementation may be necessary, the department shall conduct one or more procurement processes to expand the geographic coverage of network administrators for family support and related services. Expenditures for family support and related services purchased under this section must remain within the levels appropriated in the operating budget.

(3)(a) Network administrators shall, directly or through subcontracts with service providers:

(i) Assist caseworkers in meeting their responsibility for implementation of case plans and individual service and safety plans;

(ii) Provide the family support and related services within the categories of contracted services that are included in a child or family's case plan or individual service and safety plan within funds available under contract;

(iii) Manage the entire family support and related service array within the geographic boundaries of a given network; and

(iv) Have the authority to redistribute funding within the network based on provider performance and the need to address service gaps if approval is provided by the department.

(b) While the department caseworker retains responsibility for case management, nothing in chapter 205, Laws of 2012 limits the ability of the department to continue to contract for the provision of case management services by child-placing agencies, behavioral rehabilitation services agencies, or other entities that provided case management under contract with the department prior to July 1, 2005.

(4) The procurement process must be developed and implemented in a manner that complies with applicable provisions of intergovernmental agreements between the state of Washington and tribal governments and must provide an opportunity for tribal governments to contract for service delivery through network administrators.

(5) The procurement and resulting contracts must include, but are not limited to, the following standards and requirements:

(a) The use of family engagement approaches to successfully motivate families to engage in services and training of the network's contracted providers to apply such approaches;

(b) The use of parents and youth who are successful veterans of the child welfare system to act as mentors through activities that include, but are not limited to, helping families navigate the system, facilitating parent engagement, and minimizing distrust of the child welfare system;

(c) The establishment of qualifications for service providers participating in provider networks, such as appropriate licensure or certification, education, and accreditation by professional accrediting entities;

(d) Adequate provider capacity to meet the anticipated service needs in the network administrator's contracted service area. The network administrator must be able to demonstrate that its provider network is culturally competent and has adequate capacity to address disproportionality, including utilization of tribal and other ethnic providers capable of serving children and families of color or who need language-appropriate services;

(e) Fiscal solvency of network administrators and providers participating in the network;

(f) The use of evidence-based, research-based, and promising practices, where appropriate, including fidelity and quality assurance provisions;

(g) Network administrator quality assurance activities, including monitoring of the performance of providers in their provider network, with respect to meeting measurable service outcomes;

(h) Network administrator data reporting, including data on contracted provider performance and service outcomes; and

(i) Network administrator compliance with applicable provisions of intergovernmental agreements between the state of Washington and tribal governments and the federal and Washington state Indian child welfare act.

(6) As part of the procurement process under this section to expand the coverage of network administrators, the department shall issue the request for proposals or request for information no later than September 30, 2018, to expand the coverage area of the existing network administrator or expand the number of network administrators so that there is expanded network administrator coverage on the east side of the crest of the Cascade mountain range. Expanded implementation of performance-based contracting must begin no later than January 30, 2019, if a qualified organization responds to the procurement process. Based on the costs and benefits of the network administrator expansion in this subsection, the department shall submit a recommendation to the oversight board for children, youth, and families established pursuant to RCW 43.216.015 and the appropriate committees of the legislature by September 1, 2020, regarding the time frame for expansion of network administrator coverage to additional regions of the state.

(7) Performance-based payment methodologies must be used in network administrator contracting. Performance measures should relate to successful engagement by a child or parent in services included in their case plan, and resulting improvement in identified problem behaviors and interactions. For the initial three-year period of implementation of performance-based contracting, the department may transfer financial risk for the provision of services to network administrators only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. However, the department may develop a shared savings methodology through which the network administrator will receive a defined share of any savings that result from improved performance. If the department receives a Title IV-E waiver, the shared savings methodology must be consistent with the terms of the waiver. If a shared savings methodology is adopted, the network administrator shall reinvest the savings in enhanced services to better meet the needs of the families and children they serve.

(8) The department must actively monitor network administrator compliance with the terms of contracts executed under this section.

(9) The use of performance-based contracts under this section must be done in a manner that does not adversely affect the state's ability to continue to obtain federal funding for child welfare-related functions currently performed by the state and with consideration of options to further maximize federal funding opportunities and increase flexibility in the use of such funds, including use for preventive and in-home child welfare services.

(10) The department shall, consistent with state and federal confidentiality requirements:

(a) Share all relevant data with the network administrators in order for the network administrators to track the performance and effectiveness of the services in the network; and

(b) Make all performance data available to the public.

(11) The department must not require existing network administrators to reapply to provide network administrator services in the coverage area of the existing network administrator on June 7, 2018.

(12) Beginning January 1, 2019, and in compliance with RCW 43.01.036, the department shall annually submit to the oversight board for children, youth, and families established pursuant to RCW 43.216.015 and the appropriate committees of the legislature a report detailing the status of the network administrator procurement and implementation process.

(13) In determining the cost estimate for expanded network administrator implementation, the department shall consider the value of the existing data platform for child welfare services. [2018 c 284 § 64; 2013 c 205 § 3; 2012 c 205 § 3.]

Findings—Reports—2013 c 205: See note following RCW 74.13.690.

74.13B.030 Selection of service providers. (1) For those services included in contracts under RCW 74.13B.020, the service providers must be chosen by the department caseworker from among those in the network administrator's provider network. The criteria for provider selection must include the geographic proximity of the provider to the child or family, and the performance of the provider based upon data collected and provided by the network administrator. If a reasonably qualified provider is not available through the network administrator's provider network, at the request of a department caseworker, a provider who is not currently under contract with the network administrator may be offered a provisional contract by the network administrator, pending that provider demonstrating that he or she meets applicable provider qualifications to participate in the administrator's provider network.

(2) The department shall develop a dispute resolution process to be used when the network administrator disagrees with the department caseworker's choice of a service provider due to factors such as the service provider's performance history or ability to serve culturally diverse families. The mediator or decision maker must be a neutral employee of the department who has not been previously involved in the case. The dispute resolution process must not result in a delay of more than two business days in the receipt of needed services by the child or family.

(3) The department and network administrator shall collaborate to identify and respond to patterns or trends in service utilization that may indicate overutilization or underutilization of family support and related services, or may indicate a need to enhance service capacity. [2012 c 205 § 4.]

74.13B.040 Performance-based contracting—Review. (1) On an annual basis, beginning in the 2015-2017 biennium, the department and contracted network administrators shall:

(a) Review and update the services offered through performance-based contracts in response to service outcome data for currently contracted services and any research that has identified new evidence-based or research-based services not included in a previous procurement; and

(b) Review service utilization and outcome data to determine whether changes are needed in procurement policies or

performance-based contracts to better meet the goals established in RCW 74.13B.005.

(2) In conducting the review under subsection (1) of this section, the department must consult with department caseworkers, the exclusive bargaining representative for employees of the department, tribal representatives, parents who were formerly involved in the child welfare system, youth currently or previously in foster care, child welfare services researchers, representatives of child welfare service providers, and the Washington state institute for public policy. [2012 c 205 § 5.]

74.13B.050 Express mandate. (1) To achieve the service delivery improvements and efficiencies intended in RCW 74.13B.005, 74.13B.020, 74.13B.030, and 74.13B.060 and in *RCW 74.13.370, and pursuant to RCW 41.06.142(3), contracting with network administrators to provide services needed by children and families in the child welfare system, pursuant to RCW 74.13B.020 and 74.13B.030, and execution and monitoring of individual provider contracts, pursuant to RCW 74.13B.020, are expressly mandated by the legislature and are not subject to the processes set forth in RCW 41.06.142 (1), (4), and (5).

(2) The express mandate in subsection (1) of this section is limited to those services and activities provided in RCW 74.13B.020 and 74.13B.030. If the department includes services customarily and historically performed by department employees in the classified service in a procurement for network administrators that exceeds the scope of services or activities provided in RCW 74.13B.020 and 74.13B.030, such contracting is not specifically mandated and will be subject to all applicable contractual and legal obligations. [2012 c 205 § 6.]

***Reviser's note:** RCW 74.13.370 was repealed by 2018 c 284 § 69.

74.13B.060 Preferred service providers. For the purposes of the provision of child welfare services by provider networks, when all other elements of the responses to any procurement under RCW 74.13B.020 are equal, private nonprofit entities and federally recognized Indian tribes located in this state must receive primary preference over private for-profit entities. [2012 c 205 § 7.]

Chapter 74.14A RCW
CHILDREN AND FAMILY SERVICES

Sections

74.14A.010 Legislative declaration. The legislature reaffirms its declarations under RCW 13.34.020 that the family unit is the fundamental resource of American life which should be nurtured and that the family unit should remain intact in the absence of compelling evidence to the contrary. The legislature declares that the goal of serving emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict in their own homes to avoid out-of-home placement of the child, when that form of care is premature, unnecessary, or inappropriate, is a high priority of this state. [1983 c 192 § 1.]

74.14A.020 Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict. State efforts shall address the needs of children and their families, including emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict by:

(1) Serving children and families as a unit in the least restrictive setting available and in close proximity to the family home, consistent with the best interests and special needs of the child;

(2) Ensuring that appropriate social and health services are provided to the family unit both prior to and during the removal of a child from the home and after family reunification;

(3) Ensuring that the safety and best interests of the child are the paramount considerations when making placement and service delivery decisions;

(4) Recognizing the interdependent and changing nature of families and communities, building upon their inherent strengths, maintaining their dignity and respect, and tailoring programs to their specific circumstances;

(5) Developing and implementing comprehensive, preventive, and early intervention social and health services which have demonstrated the ability to delay or reduce the need for out-of-home placements and ameliorate problems before they become chronic or severe;

(6) Authorizing and facilitating blended funding for children who require services and residential treatment from multiple services systems; including child welfare services, mental health, alcohol and drug, and juvenile rehabilitation;

(7) Being sensitive to the family and community culture, norms, values, and expectations, ensuring that all services are provided in a culturally appropriate and relevant manner, and ensuring participation of racial and ethnic minorities at all levels of planning, delivery, and evaluation efforts;

(8)(a) Developing coordinated social and health services which:

(i) Identify problems experienced by children and their families early and provide services which are adequate in availability, appropriate to the situation, and effective;

(ii) Seek to bring about meaningful change before family situations become irreversibly destructive and before disturbed psychological behavioral patterns and health problems become severe or permanent;

(iii) Serve children and families in their own homes thus preventing unnecessary out-of-home placement or institutionalization;

(iv) Focus resources on social and health problems as they begin to manifest themselves rather than waiting for chronic and severe patterns of illness, criminality, and depen-

dency to develop which require long-term treatment, maintenance, or custody;

(v) Reduce duplication of and gaps in service delivery;

(vi) Improve planning, budgeting, and communication among all units of the department and among all agencies that serve children and families; and

(vii) Utilize outcome standards for measuring the effectiveness of social and health services for children and families.

(b) In developing services under this subsection, local communities must be involved in planning and developing community networks that are tailored to their unique needs. [2000 c 219 § 1; 1994 sp.s. c 7 § 102; 1983 c 192 § 2.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

74.14A.025 Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict—Policy updated. To update, specify, and expand the policy stated in RCW 74.14A.020, the following is declared:

It is the policy of the state of Washington to promote:

(1) Family-oriented services and supports that:

(a) Respond to the changing nature of families; and

(b) Respond to what individuals and families say they need, and meet those needs in a way that maintains their dignity and respects their choices;

(2) Culturally relevant services and supports that:

(a) Explicitly recognize the culture and beliefs of each family and use these as resources on behalf of the family;

(b) Provide equal access to culturally unique communities in planning and programs, and day-to-day work, and actively address instances where clearly disproportionate needs exist; and

(c) Enhance every culture's ability to achieve self-sufficiency and contribute in a productive way to the larger community;

(3) Coordinated services that:

(a) Develop strategies and skills for collaborative planning, problem solving, and service delivery;

(b) Encourage coordination and innovation by providing both formal and informal ways for people to communicate and collaborate in planning and programs;

(c) Allow clients, vendors, community people, and other agencies to creatively provide the most effective, responsive, and flexible services; and

(d) Commit to an open exchange of skills and information; and expect people throughout the system to treat each other with respect, dignity, and understanding;

(4) Locally planned services and supports that:

(a) Operate on the belief that each community has special characteristics, needs, and strengths;

(b) Include a cross-section of local community partners from the public and private sectors, in the planning and delivery of services and supports; and

(c) Support these partners in addressing the needs of their communities through both short-range and long-range planning and in establishing priorities within state and federal standards;

(5) Community-based prevention that encourages and supports state residents to create positive conditions in their communities to promote the well-being of families and reduce crises and the need for future services;

(6) Outcome-based services and supports that:

(a) Include a fair and realistic system for measuring both short-range and long-range progress and determining whether efforts make a difference;

(b) Use outcomes and indicators that reflect the goals that communities establish for themselves and their children;

(c) Work towards these goals and outcomes at all staff levels and in every agency; and

(d) Provide a mechanism for informing the development of program policies;

(7) Customer service that:

(a) Provides a climate that empowers staff to deliver quality programs and services;

(b) Is provided by courteous, sensitive, and competent professionals; and

(c) Upholds the dignity and respect of individuals and families by providing appropriate staff recognition, information, training, skills, and support;

(8) Creativity that:

(a) Increases the flexibility of funding and programs to promote innovation in planning, development, and provision of quality services; and

(b) Simplifies and reduces or eliminates rules that are barriers to coordination and quality services. [1992 c 198 § 2.]

Family policy council: Chapter 70.190 RCW.

74.14A.030 Treatment of juvenile offenders—Nonresidential community-based programs. The department of children, youth, and families shall address the needs of juvenile offenders whose standard range sentences do not include commitment by developing nonresidential community-based programs designed to reduce the incidence of manifest injustice commitments when consistent with public safety. [2017 3rd sp.s. c 6 § 625; 1983 c 192 § 3.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

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

Additional notes found at www.leg.wa.gov

74.14A.040 Treatment of juvenile offenders—Involvement of family unit. The department of children, youth, and families shall involve a juvenile offender's family as a unit in the treatment process. The department need not involve the family as a unit in cases when family ties have by necessity been irrevocably broken. When the natural parents have been or will be replaced by a foster family or guardian, the new family will be involved in the treatment process. [2017 3rd sp.s. c 6 § 626; 1983 c 192 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

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

Additional notes found at www.leg.wa.gov

74.14A.050 Identification of children in a state-assisted support system—Program development for long-term care—Foster care caseload—Emancipation of minors study. The secretary shall:

(1)(a) Consult with relevant qualified professionals to develop a set of minimum guidelines to be used for identifying all children who are in a state-assisted support system, whether at-home or out-of-home, who are likely to need long-term care or assistance, because they face physical, emotional, medical, mental, or other long-term challenges;

(b) The guidelines must, at a minimum, consider the following criteria for identifying children in need of long-term care or assistance:

(i) Placement within the foster care system for two years or more;

(ii) Multiple foster care placements;

(iii) Repeated unsuccessful efforts to be placed with a permanent adoptive family;

(iv) Chronic behavioral or educational problems;

(v) Repetitive criminal acts or offenses;

(vi) Failure to comply with court-ordered disciplinary actions and other imposed guidelines of behavior, including drug and alcohol rehabilitation; and

(vii) Chronic physical, emotional, medical, mental, or other similar conditions necessitating long-term care or assistance;

(2) Develop programs that are necessary for the long-term care of children and youth that are identified for the purposes of this section. Programs must: (a) Effectively address the educational, physical, emotional, mental, and medical needs of children and youth; and (b) incorporate an array of family support options, to individual needs and choices of the child and family. The programs must be ready for implementation by January 1, 1995;

(3) Conduct an evaluation of all children currently within the foster care agency caseload to identify those children who meet the criteria set forth in this section. All children entering the foster care system must be evaluated for identification of long-term needs within thirty days of placement;

(4) As a result of the passage of chapter 232, Laws of 2000, the department is conducting a pilot project to do a comparative analysis of a variety of assessment instruments to determine the most effective tools and methods for evaluation of children. The pilot project may extend through August 31, 2001. The department shall report to the appropriate committees in the senate and house of representatives by September 30, 2001, on the results of the pilot project. The department shall select an assessment instrument that can be implemented within available resources. The department shall complete statewide implementation by December 31, 2001. The department shall report to the appropriate committees in the senate and house of representatives on how the use of the selected assessment instrument has affected department policies, by no later than December 31, 2002, December 31, 2004, and December 31, 2006;

(5) Use the assessment tool developed pursuant to subsection (4) of this section in making out-of-home placement decisions for children;

(6) Each region of the department shall make the appropriate number of referrals to the foster care assessment program to ensure that the services offered by the program are used to the extent funded pursuant to the department's contract with the program. The department shall report to the legislature by November 30, 2000, on the number of referrals, by region, to the foster care assessment program. If the regions are not referring an adequate number of cases to the program, the department shall include in its report an explanation of what action it is or has taken to ensure that the referrals are adequate;

(7) The department shall report to the legislature by December 15, 2000, on how it will use the foster care assessment program model to assess children as they enter out-of-home care;

(8) The department is to accomplish the tasks listed in subsections (4) through (7) of this section within existing resources;

(9) Study and develop a comprehensive plan for the evaluation and identification of all children and youth in need of long-term care or assistance, including, but not limited to, the mentally ill, developmentally disabled, medically fragile, seriously emotionally or behaviorally disabled, and physically impaired;

(10) Study and develop a plan for the children and youth in need of long-term care or assistance to ensure the coordination of services between the department's divisions and between other state agencies who are involved with the child or youth;

(11) Study and develop guidelines for transitional services, between long-term care programs, based on the person's age or mental, physical, emotional, or medical condition; and

(12) Study and develop a statutory proposal for the emancipation of minors. [2003 c 207 § 9; 2001 c 255 § 1; 2000 c 232 § 1; 1998 c 245 § 149; 1993 c 508 § 7; 1993 c 505 § 5.]

Emancipation of minors: Chapter 13.64 RCW.

Additional notes found at www.leg.wa.gov

74.14A.060 Blended funding projects. Within available funds, the secretary of the department of children, youth, and families shall support blended funding projects for youth. To be eligible for blended funding a child must be eligible for services designed to address a behavioral, mental, emotional, or substance abuse issue from the department of social and health services or the department of children, youth, and families and require services from more than one categorical service delivery system. Before any blended funding project is established by the secretary of the department of children, youth, and families, any entity or person proposing the project shall seek input from the public health and safety network or networks established in the catchment area of the project. The network or networks shall submit recommendations on the blended funding project to the private-public initiative described in RCW 70.305.020. The private-public initiative shall advise the secretary whether to approve the proposed blended funding project. The network shall review the proposed blended funding project pursuant to its authority to examine the decategorization of program funds under *RCW 70.190.110, within the current appropriation level. The department shall document the number of children who participate in blended funding projects, the total blended funding amounts per child, the amount charged to each appropriation

by program, and services provided to each child through each blended funding project. [2018 c 58 § 74; 2016 c 197 § 9; 2011 1st sp.s. c 32 § 10; 2000 c 219 § 2.]

***Reviser's note:** RCW 70.190.110 was repealed by 2011 1st sp.s. c 32 § 13, effective June 30, 2012.

Effective date—2018 c 58: See note following RCW 28A.655.080.

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

Additional notes found at www.leg.wa.gov

74.14A.900 Short title—1983 c 192. This act may be known and cited as the "children and family services act." [1983 c 192 § 6.]

Chapter 74.14B RCW
CHILDREN'S SERVICES

Sections

74.14B.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of children, youth, and families.

(2) "Secretary" means the secretary of the department of children, youth, and families. [2019 c 470 § 18.]

74.14B.010 Child welfare workers—Hiring and training. (1) Child welfare workers shall meet minimum standards established by the department. Comprehensive training for child welfare workers shall be completed before such child welfare workers are assigned to case-carrying responsibilities as the sole worker assigned to a particular case. Intermittent, part-time, and standby child welfare workers shall be subject to the same minimum standards and training.

(2) Ongoing specialized training shall be provided for child welfare workers responsible for investigating child sexual abuse. Training participants shall have the opportunity to practice interview skills and receive feedback from instructors.

(3) The department, the criminal justice training commission, the Washington association of sheriffs and police chiefs, and the Washington association of prosecuting attorneys shall design and implement statewide training that contains consistent elements for persons engaged in the interviewing of children, including law enforcement, prosecution, and child protective services.

(4) The training required by this section shall: (a) Be based on research-based practices and standards; (b) minimize the trauma of all persons who are interviewed during abuse investigations; (c) provide methods of reducing the number of investigative interviews necessary whenever possible; (d) assure, to the extent possible, that investigative interviews are thorough, objective, and complete; (e) recognize needs of special populations, such as persons with developmental disabilities; (f) recognize the nature and consequences of victimization; (g) require investigative interviews to be conducted in a manner most likely to permit the interviewed persons the maximum emotional comfort under the circumstances; (h) address record retention and retrieval; (i) address documentation of investigative interviews; and (j) include self-care for child welfare workers.

(5) The identification of domestic violence is critical in ensuring the safety of children in the child welfare system. It is also critical for child welfare workers to support victims of domestic violence while victims continue to care for their children, when possible, as domestic violence perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself as provided in RCW 26.44.020. For these reasons, ongoing domestic violence training and consultation shall be provided to child welfare workers, including how to use the department's practice guide to domestic violence.

(6) By January 1, 2021, the department shall:

(a) Develop and implement an evidence-informed curriculum for supervisors providing support to child welfare workers to better prepare candidates for effective supervisory and leadership roles within the department;

(b) Develop specialized training for child welfare workers that includes simulation and coaching designed to improve clinical and analytical skills;

(c) Based on the report required under RCW 43.216.7501(3), develop and implement training for child welfare workers that incorporates trauma-informed care and reflective supervision principles.

(7) For purposes of this section, "child welfare worker" means an employee of the department whose job includes supporting or providing child welfare services as defined in RCW 74.13.020 or child protective services as defined in RCW 26.44.020. [2019 c 470 § 27; 2018 c 58 § 79; 2017 3rd sp.s. c 6 § 506; 2013 c 254 § 5; 1999 c 389 § 5; 1987 c 503 § 8.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

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.

74.14B.020 Foster parent training. The department shall, within funds appropriated for this purpose, provide foster parent training as an ongoing part of the foster care program. The department shall contract for a variety of support services to foster parents to reduce isolation and stress, and to increase skills and confidence. [1987 c 503 § 11.]

74.14B.030 Child abuse and neglect—Multidisciplinary teams. The department shall establish and maintain one or more multidisciplinary teams in each state region of the division of children and family services. The team shall consist of at least four persons, selected by the department, from professions which provide services to abused and neglected children and/or the parents of such children. The

teams shall be available for consultation on all cases where a risk exists of serious harm to the child and where there is dispute over whether out-of-home placement is appropriate. [1987 c 503 § 12.]

74.14B.040 Child abuse and neglect—Therapeutic day care and treatment. The department shall, within funds appropriated for this purpose, provide therapeutic day care and day treatment to children who have been abused or neglected and meet program eligibility criteria. [1987 c 503 § 13.]

74.14B.050 Child abuse and neglect—Counseling referrals. The department shall inform victims of child abuse and neglect and their families of the availability of state-supported counseling through the crime victims' compensation program, community mental health centers, domestic violence and sexual assault programs, and other related programs. The department shall assist victims with referrals to these services. [2017 3rd sp.s. c 6 § 507; 1987 c 503 § 14.]

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.

74.14B.070 Child victims of sexual assault or sexual abuse—Early identification, treatment. The department shall, subject to available funds, establish a system of early identification and referral to treatment of child victims of sexual assault or sexual abuse. The system shall include schools, physicians, sexual assault centers, domestic violence centers, child protective services, and foster parents. A mechanism shall be developed to identify communities that have experienced success in this area and share their expertise and methodology with other communities statewide. [2017 3rd sp.s. c 6 § 508; 1990 c 3 § 1403.]

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.

Additional notes found at www.leg.wa.gov

74.14B.080 Liability insurance for foster parents. (1) Subject to subsection (2) of this section, the secretary shall provide liability insurance to foster parents licensed under chapter 74.15 RCW. The coverage shall be for personal injury and property damage caused by foster parents or foster children that occurred while the children were in foster care. Such insurance shall cover acts of ordinary negligence but shall not cover illegal conduct or bad faith acts taken by foster parents in providing foster care. Moneys paid from liability insurance for any claim are limited to the amount by which the claim exceeds the amount available to the claimant from any valid and collectible liability insurance.

(2) The secretary may purchase the insurance required in subsection (1) of this section or may choose a self-insurance method. The total moneys expended pursuant to this authorization shall not exceed five hundred thousand dollars per biennium. If the secretary elects a method of self-insurance, the expenditure shall include all administrative and staff costs. If the secretary elects a method of self-insurance, he or she may, by rule, place a limit on the maximum amount to be paid on each claim.

(3) Nothing in this section or RCW 4.24.590 is intended to modify the foster parent reimbursement plan in place on July 1, 1991.

(4) The liability insurance program shall be available by July 1, 1991. [2017 3rd sp.s. c 6 § 509; 1991 c 283 § 2.]

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.

Findings—1991 c 283: "The legislature recognizes the unique legal risks that foster parents face in taking children into their care. Third parties have filed claims against foster parents for losses and damage caused by foster children. Additionally, foster children and their parents have sued foster parents for actions occurring while the children were in foster care. The legislature finds that some potential foster parents are unwilling to subject themselves to potential liability without insurance protection. The legislature further finds that to encourage those people to serve as foster parents, it is necessary to assure that such insurance is available to them." [1991 c 283 § 1.]

Additional notes found at www.leg.wa.gov

74.14B.902 Effective date—1987 c 503. This 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 July 1, 1987. [1987 c 503 § 22.]

Chapter 74.14C RCW
FAMILY PRESERVATION SERVICES

Sections

74.14C.005 Findings and intent. (1) The legislature believes that protecting the health and safety of children is paramount. The legislature recognizes that the number of children entering out-of-home care is increasing and that a number of children receive long-term foster care protection. Reasonable efforts by the department to shorten out-of-home placement or avoid it altogether should be a major focus of the child welfare system. It is intended that providing up-front services decrease the number of children entering out-of-home care and have the effect of eventually lowering foster care expenditures and strengthening the family unit.

Within available funds, the legislature directs the department to focus child welfare services on protecting the child, strengthening families and, to the extent possible, providing necessary services in the family setting, while drawing upon the strengths of the family. The legislature intends services be locally based and offered as early as possible to avoid disruption to the family, out-of-home placement of the child, and

entry into the dependency system. The legislature also intends that these services be used for those families whose children are returning to the home from out-of-home care. These services are known as family preservation services and intensive family preservation services and are characterized by the following values, beliefs, and goals:

(a) Safety of the child is always the first concern;

(b) Children need their families and should be raised by their own families whenever possible;

(c) Interventions should focus on family strengths and be responsive to the individual family's cultural values and needs;

(d) Participation should be voluntary; and

(e) Improvement of family functioning is essential in order to promote the child's health, safety, and welfare and thereby allow the family to remain intact and allow children to remain at home.

(2) Subject to the availability of funds for such purposes, the legislature intends for these services to be made available to all eligible families on a statewide basis through a phased-in process. Except as otherwise specified by statute, the department shall have the authority and discretion to implement and expand these services as provided in RCW 74.14C.010 through 74.14C.100. The department shall consult with the community public health and safety networks when assessing a community's resources and need for services.

(3) It is the legislature's intent that, within available funds, the department develop services in accordance with RCW 74.14C.010 through 74.14C.100.

(4) Nothing in RCW 74.14C.010 through 74.14C.100 shall be construed to create an entitlement to services nor to create judicial authority to order the provision of preservation services to any person or family if the services are unavailable or unsuitable or that the child or family are not eligible for such services. [2017 3rd sp.s. c 6 § 510; 1995 c 311 § 1; 1992 c 214 § 1.]

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.

74.14C.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Community support systems" means the support that may be organized through extended family members, friends, neighbors, religious organizations, community programs, cultural and ethnic organizations, or other support groups or organizations.

(2) "Department" means the department of children, youth, and families.

(3) "Family preservation services" means in-home or community-based services drawing on the strengths of the family and its individual members while addressing family needs to strengthen and keep the family together where possible and may include:

(a) Respite care of children to provide temporary relief for parents and other caregivers;

(b) Services designed to improve parenting skills with respect to such matters as child development, family budgeting, coping with stress, health, safety, and nutrition; and

(c) Services designed to promote the well-being of children and families, increase the strength and stability of families, increase parents' confidence and competence in their parenting abilities, promote a safe, stable, and supportive family environment for children, and otherwise enhance children's development.

Family preservation services shall have the characteristics delineated in RCW 74.14C.020 (2) and (3).

(4) "Imminent" means a decision has been made by the department that, without intensive family preservation services, a petition requesting the removal of a child from the family home will be immediately filed under chapter 13.32A or 13.34 RCW, or that a voluntary placement agreement will be immediately initiated.

(5) "Intensive family preservation services" means community-based services that are delivered primarily in the home, that follow intensive service models with demonstrated effectiveness in reducing or avoiding the need for unnecessary imminent out-of-home placement, and that have all of the characteristics delineated in RCW 74.14C.020 (1) and (3).

(6) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(7) "Paraprofessional worker" means any individual who is trained and qualified to provide assistance and community support systems development to families and who acts under the supervision of a preservation services therapist. The paraprofessional worker is not intended to replace the role and responsibilities of the preservation services therapist.

(8) "Preservation services" means family preservation services and intensive family preservation services that consider the individual family's cultural values and needs.

(9) "Secretary" means the secretary of the department. [2017 3rd sp.s. c 6 § 511; 1996 c 240 § 2; 1995 c 311 § 2; 1992 c 214 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

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.

74.14C.020 Preservation services. (1) Intensive family preservation services shall have all of the following characteristics:

(a) Services are provided by specially trained service providers who have received at least forty hours of training from recognized intensive in-home services experts. Service providers deliver the services in the family's home, and other environments of the family, such as their neighborhood or schools;

(b) Caseload size averages two families per service provider unless paraprofessional services are utilized, in which

case a provider may, but is not required to, handle an average caseload of five families;

(c) The services to the family are provided by a single service provider who may be assisted by paraprofessional workers, with backup providers identified to provide assistance as necessary;

(d) Services are available to the family within twenty-four hours following receipt of a referral to the program; and

(e) Except as provided in subsection (4) of this section, duration of service is limited to a maximum of forty days, unless paraprofessional workers are used, in which case the duration of services is limited to a maximum of ninety days. The department may authorize an additional provision of service through an exception to policy when the department and provider agree that additional services are needed.

(2) Family preservation services shall have all of the following characteristics:

(a) Services are delivered primarily in the family home or community;

(b) Services are committed to reinforcing the strengths of the family and its members and empowering the family to solve problems and become self-sufficient;

(c) Services are committed to providing support to families through community organizations including but not limited to school, church, cultural, ethnic, neighborhood, and business;

(d) Services are available to the family within forty-eight hours of referral unless an exception is noted in the file;

(e) Except as provided in subsection (4) of this section, duration of service is limited to a maximum of six months, unless the department requires additional follow-up on an individual case basis;

(f) Caseload size no more than ten families per service provider, which can be adjusted when paraprofessional workers are used or required by the department; and

(g) Support and retain foster families so they can provide quality family-based settings for children in foster care.

(3) Preservation services shall include the following characteristics:

(a) Services protect the child and strengthen the family;

(b) Service providers have the authority and discretion to spend funds, up to a maximum amount specified by the department, to help families obtain necessary food, shelter, or clothing, or to purchase other goods or services that will enhance the effectiveness of intervention;

(c) Services are available to the family twenty-four hours a day and seven days a week;

(d) Services enhance parenting skills, family and personal self-sufficiency, functioning of the family, and reduce stress on families; and

(e) Services help families locate and use additional assistance including, but not limited to, the development and maintenance of community support systems, counseling and treatment services, housing, child care, education, job training, emergency cash grants, state and federally funded public assistance, and other basic support services.

(4) The department may offer or provide family preservation services or preservation services to families as remedial services pursuant to proceedings brought under chapter 13.34 RCW. If the department elects to do so, these services are not considered remedial services as defined in chapter 13.34 RCW, and the department may extend the duration of such services for a period of up to fifteen months following the return home of a child under chapter 13.34 RCW. The purpose for extending the duration of these services is to, whenever possible, facilitate safe and timely reunification of the family and to ensure the strength and stability of the reunification. [2019 c 172 § 9; 1996 c 240 § 3; 1995 c 311 § 3; 1992 c 214 § 3.]

74.14C.030 Department duties. (1) The department shall be the lead administrative agency for preservation services and may receive funding from any source for the implementation or expansion of such services. The department shall:

(a) Provide coordination and planning with the advice of the community networks for the implementation and expansion of preservation services; and

(b) Monitor and evaluate such services to determine whether the programs meet measurable standards specified by this chapter and the department.

(2) The department may: (a) Allow its contractors for preservation services to use paraprofessional workers when the department and provider determine the use appropriate. The department may also use paraprofessional workers, as appropriate, when the department provides preservation services; and (b) allow follow-up to be provided, on an individual case basis, when the department and provider determine the use appropriate.

(3) In carrying out the requirements of this section, the department shall consult with qualified agencies that have demonstrated expertise and experience in preservation services.

(4) The department may provide preservation services directly and shall, within available funds, enter into outcome-based, competitive contracts with social service agencies to provide preservation services, provided that such agencies meet measurable standards specified by this chapter and by the department. The standards shall include, but not be limited to, satisfactory performance in the following areas:

(a) The number of families appropriately connected to community resources;

(b) Avoidance of new referrals accepted by the department for child protective services or family reconciliation services within one year of the most recent case closure by the department;

(c) Consumer satisfaction;

(d) For reunification cases, reduction in the length of stay in out-of-home placement; and

(e) Reduction in the level of risk factors specified by the department.

(5)(a) The department shall not provide intensive family preservation services unless it is demonstrated that provision of such services prevent out-of-home placement in at least seventy percent of the cases served for a period of at least six months following termination of services. The department's caseworkers may only provide preservation services if there is no other qualified entity willing or able to do so.

(b) Contractors shall demonstrate that provision of intensive family preservation services prevent out-of-home placement in at least seventy percent of the cases served for a period of no less than six months following termination of

services. The department may increase the period of time based on additional research and data. If the contractor fails to meet the seventy percent requirement the department may: (i) Review the conditions that may have contributed to the failure to meet the standard and renew the contract if the department determines: (A) The contractor is making progress to meet the standard; or (B) conditions unrelated to the provision of services, including case mix and severity of cases, contributed to the failure; or (ii) reopen the contract for other bids.

(c) The department shall cooperate with any person who has a contract under this section in providing data necessary to determine the amount of reduction in foster care. For the purposes of this subsection "prevent out-of-home placement" means that a child who has been a recipient of intensive family preservation services has not been placed outside of the home, other than for a single, temporary period of time not exceeding fourteen days.

(6) The department shall adopt rules to implement this chapter. [1996 c 240 § 4; 1995 c 311 § 4; 1992 c 214 § 4.]

74.14C.032 Preservation services contracts. The initial contracts under *RCW 74.14C.030(3) shall be executed not later than July 1996 and shall expire June 30, 1997. Subsequent contracts shall be for periods not to exceed twenty-four months. [1995 c 311 § 13.]

***Reviser's note:** RCW 74.14C.030 was amended by 1996 c 240 § 4, changing subsection (3) to subsection (4).

74.14C.040 Intensive family preservation services—Eligibility criteria. (1) Intensive family preservation services may be provided to children and their families only when the department has determined that:

(a) The child has been placed out-of-home or is at imminent risk of an out-of-home placement due to:

(i) Child abuse or neglect;

(ii) A serious threat of substantial harm to the child's health, safety, or welfare; or

(iii) Family conflict; and

(b) There are no other reasonably available services including family preservation services that will prevent out-of-home placement of the child or make it possible to immediately return the child home.

(2) The department shall refer eligible families to intensive family preservation services on a twenty-four hour intake basis. The department need not refer otherwise eligible families, and intensive family preservation services need not be provided, if:

(a) The services are not available in the community in which the family resides;

(b) The services cannot be provided because the program is filled to capacity and there are no current service openings;

(c) The family refuses the services;

(d) The department, or the agency that is supervising the foster care placement, has developed a case plan that does not include reunification of the child and family; or

(e) The department or the service provider determines that the safety of a child, a family member, or persons providing the service would be unduly threatened.

(3) Nothing in this chapter shall prevent provision of intensive family preservation services to nonfamily members when the department or the service provider deems it necessary or appropriate to do so in order to assist the family or child. [1995 c 311 § 6; 1992 c 214 § 5.]

74.14C.042 Family preservation services—Eligibility criteria. (1) Family preservation services may be provided to children and their families only when the department has determined that without intervention, the child faces a substantial likelihood of out-of-home placement due to:

(a) Child abuse or neglect;

(b) A serious threat of substantial harm to the child's health, safety, or welfare; or

(c) Family conflict.

(2) The department need not refer otherwise eligible families and family preservation services need not be provided, if:

(a) The services are not available in the community in which the family resides;

(b) The services cannot be provided because the program is filled to capacity;

(c) The family refuses the services; or

(d) The department or the service provider determines that the safety of a child, a family member, or persons providing the services would be unduly threatened.

(3) Nothing in this chapter shall prevent provision of family preservation services to nonfamily members when the department or the service provider deems it necessary or appropriate to do so in order to assist the family or the child. [1995 c 311 § 7.]

74.14C.060 Funds, volunteer services. For the purpose of providing preservation services the department may:

(1) Solicit and use any available federal or private resources, which may include funds, in-kind resources, or volunteer services; and

(2) Use any available state resources, which may include in-kind resources or volunteer services. [1995 c 311 § 10; 1992 c 214 § 7.]

74.14C.065 Federal funds. Any federal funds made available under RCW 74.14C.060 shall be used to supplement and shall not supplant state funds to carry out the purposes of this chapter. However, during the 1995-97 fiscal biennium, federal funds made available under RCW 74.14C.060 may be used to supplant state funds to carry out the purposes of this chapter. [1995 2nd sp.s. c 18 § 922; 1992 c 214 § 11.]

Additional notes found at www.leg.wa.gov

74.14C.090 Reports on referrals and services. Each department caseworker who refers a client for preservation services shall file a report with his or her direct supervisor stating the reasons for which the client was referred. The caseworker's supervisor shall verify in writing his or her belief that the family who is the subject of a referral for preservation services meets the eligibility criteria for services as provided in this chapter. The direct supervisor shall report monthly to the regional administrator on the provision of these services. The regional administrator shall report to the secretary quarterly on the provision of these services for the entire region. The secretary shall post on the department's

web site a semiannual report on the provision of these services on a statewide basis. [2017 3rd sp.s. c 6 § 513; 1995 c 311 § 8.]

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.

74.14C.100 Training and consultation for department personnel—Training for judges and service providers. (1) The department shall, within available funds, provide for ongoing training and consultation to department personnel to carry out their responsibilities effectively. Such training may:

(a) Include the family unit as the primary focus of service; identifying family member strengths; empowering families; child, adult, and family development; stress management; and may include parent training and family therapy techniques;

(b) Address intake and referral, assessment of risk, case assessment, matching clients to services, and service planning issues in the context of the home-delivered service model, including strategies for engaging family members, defusing violent situations, and communication and conflict resolution skills;

(c) Cover methods of helping families acquire the skills they need, including home management skills, life skills, parenting, child development, and the use of community resources;

(d) Address crisis intervention and other strategies for the management of depression, and suicidal, assaultive, and other high-risk behavior; and

(e) Address skills in collaborating with other disciplines and services in promoting the safety of children and other family members and promoting the preservation of the family.

(2) The department and the administrative office of the courts shall, within available funds, collaborate in providing training to judges, and others involved in the provision of services pursuant to this title, including service providers, on the function and use of preservation services. [2005 c 282 § 48; 1995 c 311 § 12.]

Chapter 74.15 RCW
CARE OF CHILDREN, EXPECTANT MOTHERS, PERSONS WITH DEVELOPMENTAL DISABILITIES

Sections

Adoption: Chapter 26.33 RCW.

Age of majority: Chapter 26.28 RCW.

Birthing centers: Chapter 18.46 RCW.

Child abuse: Chapter 26.44 RCW.

Immunization program, applicability to day care centers: RCW 28A.210.060 through 28A.210.170.

Liability insurance for foster parents: RCW 74.14B.080.

Liability of foster parents: RCW 4.24.590.

Out-of-home placement—Court action upon filing of child in need of services petition—Child placement: RCW 13.32A.160.

Uniform Parentage Act: Chapter 26.26A RCW.

74.15.010 Declaration of purpose. The purpose of chapter 74.15 RCW and RCW 74.13.031 is:

(1) To safeguard the health, safety, and well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes, which is paramount over the right of any person to provide care;

(2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

(3) To promote the development of a sufficient number and variety of adequate foster family homes and maternity-care facilities, both public and private, through the cooperative efforts of public agencies and related groups;

(4) To provide consultation to agencies caring for children, expectant mothers or developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(5) To license agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that ade-

quate minimum standards are maintained by all agencies caring for children, expectant mothers and developmentally disabled persons. [2018 c 284 § 65; 2009 c 520 § 12; 1995 c 302 § 2; 1983 c 3 § 192; 1977 ex.s. c 80 § 70; 1967 c 172 § 1.]

Intent—1995 c 302: "The legislature declares that the state of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of children, including those who receive care away from their own homes. The legislature further declares that no person or agency has a right to be licensed under this chapter to provide care for children. The health, safety, and well-being of children must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, and whether to take other licensing action. The legislature intends, through the provisions of this act, to provide the department of social and health services with additional enforcement authority to carry out the purpose and provisions of this act. Furthermore, administrative law judges should receive specialized training so that they have the specialized expertise required to appropriately review licensing decisions of the department.

Children placed in foster care are particularly vulnerable and have a special need for placement in an environment that is stable, safe, and nurturing. For this reason, foster homes should be held to a high standard of care, and department decisions regarding denial, suspension, or revocation of foster care licenses should be upheld on review if there are reasonable grounds for such action." [1995 c 302 § 1.]

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

Additional notes found at www.leg.wa.gov

74.15.020 Definitions. ***(Effective until October 1, 2019.)*** The definitions in this section apply throughout this chapter and RCW 74.13.031 unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers, or persons with developmental disabilities for services rendered:

(a) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(b) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 43.185C.295 through 43.185C.310;

(d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(i) "Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, excluding Saturdays, Sundays, and holidays to children who have been removed from their parent's or guardian's care by child protective services or law enforcement;

(j) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(k) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted chil-

dren of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection (2), even after the marriage is terminated;

(v) Relatives, as named in (a)(i), (ii), (iii), or (iv) of this subsection (2), of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States citizenship and immigration services, or persons who have the care of such an international child in their home;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and assisted living facilities licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities approved and certified under chapter 71A.22 RCW;

(j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(l) An agency operated by any unit of local, state, or federal government or an agency licensed by an Indian tribe pursuant to RCW 74.15.190;

(m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(o) A host home program, and host home, operated by a tax exempt organization for youth not in the care of or receiving services from the department, if that program: (i) Recruits and screens potential homes in the program, including performing background checks on individuals over the age of eighteen residing in the home through the Washington state patrol or equivalent law enforcement agency and performing physical inspections of the home; (ii) screens and provides case management services to youth in the program; (iii) obtains a notarized permission slip or limited power of attorney from the parent or legal guardian of the youth authorizing the youth to participate in the program and the authorization is updated every six months when a youth remains in a host home longer than six months; (iv) obtains insurance for the program through an insurance provider authorized under Title 48 RCW; (v) provides mandatory reporter and confidentiality training; and (vi) registers with the secretary of state as provided in RCW 24.03.550. A host home is a private home that volunteers to host youth in need of temporary placement that is associated with a host home program. Any host home program that receives local, state, or government funding shall report the following information to the office of homeless youth prevention and protection programs annually by December 1st of each year: The number of children the program served, why the child was placed with a host home, and where the child went after leaving the host home, including but not limited to returning to the parents, running away, reaching the age of majority, or becoming a dependent of the state. A host home program shall not receive more than one hundred thousand dollars per year of public funding, including local, state, and federal funding. A host home shall not receive any local, state, or government funding.

(3) "Department" means the department of children, youth, and families.

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Performance-based contracts" or "contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts may also include provisions that link the performance of the contractor to the level and timing of the reimbursement.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

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

(9) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(10) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the workforce innovation and opportunity act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs. [2018 c 284 § 67; (2018 c 284 § 66 expired July 1, 2018); 2017 3rd sp.s. c 6 § 408; 2017 c 39 § 11; 2016 c 166 § 1; 2013 c 105 § 2; 2012 c 10 § 61; 2009 c 520 § 13; 2007 c 412 § 1. Prior: 2006 c 265 § 401; 2006 c 90 § 1; 2006 c 54 § 7; prior: 2001 c 230 § 1; 2001 c 144 § 1; 2001 c 137 § 3; 1999 c 267 § 11; 1998 c 269 § 3; 1997 c 245 § 7; prior: 1995 c 311 § 18; 1995 c 302 § 3; 1994 c 273 § 21; 1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Effective date—2018 c 284 §§ 3, 8, 13, 20, 33, 36, and 67: See note following RCW 13.34.030.

Expiration date—2018 c 284 §§ 2, 7, 12, 19, 32, 35, and 66: See note following RCW 13.34.030.

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.

Findings—Intent—2013 c 105: See note following RCW 74.15.311.

Application—2012 c 10: See note following RCW 18.20.010.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Intent—1995 c 302: See note following RCW 74.15.010.

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

Additional notes found at www.leg.wa.gov

74.15.020 Definitions. ***(Effective October 1, 2019.)*** The definitions in this section apply throughout this chapter and RCW 74.13.031 unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers, or persons with developmental disabilities for services rendered:

(a) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(b) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 43.185C.295 through 43.185C.310;

(d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis. "Group care facility" includes but is not limited to:

(i) Qualified residential treatment programs as defined in RCW 13.34.030;

(ii) Facilities specializing in providing prenatal, postpartum, or parenting supports for youth; and

(iii) Facilities providing high-quality residential care and supportive services to children who are, or who are at risk of becoming, victims of sex trafficking;

(g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(i) "Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, excluding Saturdays, Sundays, and holidays to children who have been removed from their parent's or guardian's care by child protective services or law enforcement;

(j) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(k) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection (2), even after the marriage is terminated;

(v) Relatives, as named in (a)(i), (ii), (iii), or (iv) of this subsection (2), of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States citizenship and immigration services, or persons who have the care of such an international child in their home;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and assisted living facilities licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities approved and certified under chapter 71A.22 RCW;

(j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(l) An agency operated by any unit of local, state, or federal government or an agency licensed by an Indian tribe pursuant to RCW 74.15.190;

(m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(o) A host home program, and host home, operated by a tax exempt organization for youth not in the care of or receiving services from the department, if that program: (i) Recruits and screens potential homes in the program, including performing background checks on individuals over the age of eighteen residing in the home through the Washington state patrol or equivalent law enforcement agency and performing physical inspections of the home; (ii) screens and provides case management services to youth in the program; (iii) obtains a notarized permission slip or limited power of attorney from the parent or legal guardian of the youth authorizing the youth to participate in the program and the authorization is updated every six months when a youth remains in a host home longer than six months; (iv) obtains insurance for the program through an insurance provider authorized under Title 48 RCW; (v) provides mandatory reporter and confidentiality training; and (vi) registers with the secretary of state as provided in RCW 24.03.550. A host home is a private home that volunteers to host youth in need of temporary placement that is associated with a host home program. Any host home program that receives local, state, or government funding shall report the following information to the office of homeless youth prevention and protection programs annually by December 1st of each year: The number of children the program served, why the child was placed with a host home, and where the child went after leaving the host home, including but not limited to returning to the parents, running away, reaching the age of majority, or becoming a dependent of the

state. A host home program shall not receive more than one hundred thousand dollars per year of public funding, including local, state, and federal funding. A host home shall not receive any local, state, or government funding.

(3) "Department" means the department of children, youth, and families.

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Performance-based contracts" or "contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts may also include provisions that link the performance of the contractor to the level and timing of the reimbursement.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

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

(9) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(10) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the workforce innovation and opportunity act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs. [2019 c 172 § 10; 2018 c 284 § 67; (2018 c 284 § 66 expired July 1, 2018); 2017 3rd sp.s. c 6 § 408; 2017 c 39 § 11; 2016 c 166 § 1; 2013 c 105 § 2; 2012 c 10 § 61; 2009 c 520 § 13; 2007 c 412 § 1. Prior: 2006 c 265 § 401; 2006 c 90 § 1; 2006 c 54 § 7; prior: 2001 c 230 § 1; 2001 c 144 § 1; 2001 c 137 § 3; 1999 c 267 § 11; 1998 c 269 § 3; 1997 c 245 § 7; prior: 1995 c 311 § 18; 1995 c 302 § 3; 1994 c 273 § 21; 1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Effective date—2019 c 172 §§ 3, 4, and 10-15: See note following RCW 13.34.420.

Effective date—2018 c 284 §§ 3, 8, 13, 20, 33, 36, and 67: See note following RCW 13.34.030.

Expiration date—2018 c 284 §§ 2, 7, 12, 19, 32, 35, and 66: See note following RCW 13.34.030.

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.

Findings—Intent—2013 c 105: See note following RCW 74.15.311.

Application—2012 c 10: See note following RCW 18.20.010.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Intent—1995 c 302: See note following RCW 74.15.010.

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

Additional notes found at www.leg.wa.gov

74.15.030 Powers and duties of secretary. The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) Obtaining background information and any out-of-state equivalent, to determine whether the applicant or service provider is disqualified and to determine the character, competence, and suitability of an agency, the agency's employees, volunteers, and other persons associated with an agency;

(c) Conducting background checks for those who will or may have unsupervised access to children or expectant mothers; however, a background check is not required if a caregiver approves an activity pursuant to the prudent parent standard contained in RCW 74.13.710;

(d) Obtaining child protective services information or records maintained in the department case management information system. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter;

(e) Submitting a fingerprint-based background check through the Washington state patrol under chapter 10.97 RCW and through the federal bureau of investigation for:

(i) Agencies and their staff, volunteers, students, and interns when the agency is seeking license or relicense;

(ii) Foster care and adoption placements; and

(iii) Any adult living in a home where a child may be placed;

(f) If any adult living in the home has not resided in the state of Washington for the preceding five years, the department shall review any child abuse and neglect registries maintained by any state where the adult has resided over the preceding five years;

(g) The cost of fingerprint background check fees will be paid as required in RCW 43.43.837;

(h) National and state background information must be used solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children or expectant mothers;

(i) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(j) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children or expectant mothers;

(k) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(l) The financial ability of an agency to comply with minimum requirements established pursuant to this chapter and RCW 74.13.031; and

(m) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children or expectant mothers prior to authorizing that person to care for children or expectant mothers. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including agencies or facilities operated by the department of social and health services that receive children for care outside their own homes, child day-care centers, and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to this chapter and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of this chapter and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with this chapter and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children or expectant mothers. [2019 c 470 § 20; 2017 3rd sp.s. c 6 § 409; 2014 c 104 § 2. Prior: 2007 c 387 § 5; 2007 c 17 § 14; prior: 2006 c 265 § 402; 2006 c 54 § 8; 2005 c 490 § 11; prior: 2000 c 162 § 20; 2000 c 122 § 40; 1997 c 386 § 33; 1995 c 302 § 4; 1988 c 189 § 3; prior: 1987 c 524 § 13; 1987 c 486 § 14; 1984 c 188 § 5; 1982 c 118 § 6; 1980 c 125 § 1; 1979 c 141 § 355; 1977 ex.s. c 80 § 72; 1967 c 172 § 3.]

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.

Intent—1995 c 302: See note following RCW 74.15.010.

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

Additional notes found at www.leg.wa.gov

74.15.038 Harm to child or client by individual hired by contracted agency—Department not liable. If an agency operating under contract with the department chooses to hire an individual that would be precluded from employment with the department based on a disqualifying crime or negative action, the department and its officers and employees have no liability arising from any injury or harm to a child or other department client that is attributable to such individual. [2018 c 58 § 56; 2014 c 88 § 3.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

74.15.040 Licenses for foster-family homes required—Inspections. An agency seeking to accept and serve children, developmentally disabled persons, or expectant mothers as a foster-family home shall make application for license in such form and substance as required by the department. The department shall maintain a list of applicants through which placement may be undertaken. However, agencies and the department shall not place a child, developmentally disabled person, or expectant mother in a home until the home is licensed. The department shall inquire whether an applicant has previously resided in any other state or foreign country and shall check databases available to it through the Washington state patrol and federal bureau of investigation to ascertain whether the applicant has ever been the subject of a conviction or civil finding outside of the state of Washington that bears upon the fitness of the applicant to serve as a foster-family home. Foster-family homes shall be inspected prior to licensure, except that inspection by the department is not required if the foster-family home is under the supervision of a licensed agency upon certification to the department by the licensed agency that such homes meet the requirements for foster homes as adopted pursuant to chapter 74.15 RCW and

RCW 74.13.031. [2008 c 232 § 3; 1982 c 118 § 7; 1979 c 141 § 356; 1967 c 172 § 4.]

Finding—2008 c 232: See note following RCW 26.44.240.

74.15.050 Fire protection—Powers and duties of chief of the Washington state patrol. The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty:

(1) In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, except foster-family homes and child-placing agencies, necessary to protect all persons residing therein from fire hazards;

(2) To make or cause to be made such inspections and investigations of agencies, other than foster-family homes or child-placing agencies, as he or she deems necessary;

(3) To make a periodic review of requirements under RCW 74.15.030(7) and to adopt necessary changes after consultation as required in subsection (1) of this section;

(4) To issue to applicants for licenses hereunder, other than foster-family homes or child-placing agencies, who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department before a license shall be issued, except that an initial license may be issued as provided in RCW 74.15.120. [2009 c 520 § 15; 1995 c 369 § 62; 1986 c 266 § 123; 1982 c 118 § 8; 1979 c 141 § 357; 1967 c 172 § 5.]

Additional notes found at www.leg.wa.gov

74.15.060 Health protection—Powers and duties of secretary of health. The secretary of health shall have the power and it shall be his or her duty:

In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to develop minimum requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, necessary to promote the health of all persons residing therein.

The secretary of health or the city, county, or district health department designated by the secretary shall have the power and the duty:

(1) To make or cause to be made such inspections and investigations of agencies as may be deemed necessary; and

(2) To issue to applicants for licenses hereunder who comply with the requirements adopted hereunder, a certificate of compliance, a copy of which shall be presented to the department before a license shall be issued, except that an initial license may be issued as provided in RCW 74.15.120. [2017 3rd sp.s. c 6 § 410; 1991 c 3 § 376; 1989 1st ex.s. c 9 § 265; 1987 c 524 § 14; 1982 c 118 § 9; 1970 ex.s. c 18 § 14; 1967 c 172 § 6.]

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.

Additional notes found at www.leg.wa.gov

74.15.070 Articles of incorporation and amendments—Copies to be furnished to department. A copy of the articles of incorporation of any agency or amendments to the articles of existing corporation agencies shall be sent by the secretary of state to the department at the time such articles or amendments are filed. [2017 3rd sp.s. c 6 § 411; 1979 c 141 § 358; 1967 c 172 § 7.]

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.

74.15.080 Access to agencies, records. All agencies subject to chapter 74.15 RCW and RCW 74.13.031 shall accord the department, the secretary of health, the chief of the Washington state patrol, and the director of fire protection, or their designees, the right of entrance and the privilege of access to and inspection of records for the purpose of determining whether or not there is compliance with the provisions of chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted thereunder. [2017 3rd sp.s. c 6 § 412; 1995 c 369 § 63; 1989 1st ex.s. c 9 § 266; 1986 c 266 § 124; 1979 c 141 § 359; 1967 c 172 § 8.]

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.

Additional notes found at www.leg.wa.gov

74.15.090 Licenses required for agencies. Except as provided in RCW 74.15.190, it shall hereafter be unlawful for any agency to receive children, expectant mothers or developmentally disabled persons for supervision or care, or arrange for the placement of such persons, unless such agency is licensed as provided in chapter 74.15 RCW. [1987 c 170 § 14; 1982 c 118 § 10; 1977 ex.s. c 80 § 73; 1967 c 172 § 9.]

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

Additional notes found at www.leg.wa.gov

74.15.100 License application, issuance, duration—Reclassification—Location changes. Each agency shall make application for a license or renewal of license to the department on forms prescribed by the department. A licensed agency having foster-family homes under its supervision may make application for a license on behalf of any such foster-family home. Such a foster home license shall cease to be valid when the home is no longer under the supervision of that agency. Upon receipt of such application, the department shall either grant or deny a license within ninety days unless the application is for licensure as a foster-family home, in which case RCW 74.15.040 shall govern. A license shall be granted if the agency meets the minimum requirements set forth in chapter 74.15 RCW and RCW 74.13.031 and the departmental requirements consistent herewith, except that an initial license may be issued as provided in RCW 74.15.120. Licenses provided for in chapter 74.15 RCW and RCW 74.13.031 shall be issued for a period of three years. The licensee, however, shall advise the secretary

of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee. The license shall be limited to a particular location which shall be stated on the license. For licensed foster-family homes having an acceptable history of child care, the license may remain in effect for thirty days after a move, except that this will apply only if the family remains intact. Licensees must notify their licensor before moving to a new location and may request a continuation of the license at the new location. At the request of the licensee, the department shall, within thirty days following a foster-family home licensee's move to a new location, amend the license to reflect the new location, provided the new location and the licensee meet minimum licensing standards. [2018 c 284 § 68. Prior: 2009 c 520 § 16; 2009 c 206 § 1; 2006 c 265 § 403; 1995 c 302 § 8; 1982 c 118 § 11; 1979 c 141 § 360; 1967 c 172 § 10.]

Intent—1995 c 302: See note following RCW 74.15.010.

Additional notes found at www.leg.wa.gov

74.15.110 Renewal of licenses. If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days prior to the expiration date of the license except that a request for renewal of a foster family home license shall be filed prior to the expiration of the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department shall act. [1991 c 14 § 1; 1967 c 172 § 11.]

74.15.120 Initial licenses. The secretary may, at his or her discretion, issue an initial license instead of a full license, to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license. An initial license shall not be granted to any foster-family home except as specified in this section. An initial license may be granted to a foster-family home only if the following three conditions are met: (1) The license is limited so that the licensee is authorized to provide care only to a specific child or specific children; (2) the department has determined that the licensee has a relationship with the child, and the child is comfortable with the licensee, or that it would otherwise be in the child's best interest to remain or be placed in the licensee's home; and (3) the initial license is issued for a period not to exceed ninety days. [2017 3rd sp.s. c 6 § 413; 1995 c 311 § 22; 1979 c 141 § 361; 1967 c 172 § 12.]

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.

74.15.125 Probationary licenses. (1) The department may issue a probationary license to a licensee who has had a license but is temporarily unable to comply with a rule or has been the subject of multiple complaints or concerns about noncompliance if:

(a) The noncompliance does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue; and

(b) The licensee has a plan approved by the department to correct the area of noncompliance within the probationary period.

(2) A probationary license may be issued for up to six months, and at the discretion of the department it may be extended for an additional six months. The department shall immediately terminate the probationary license, if at any time the noncompliance for which the probationary license was issued presents an immediate threat to the health or well-being of the children.

(3) The department may, at any time, issue a probationary license for due cause that states the conditions of probation.

(4) An existing license is invalidated when a probationary license is issued.

(5) At the expiration of the probationary license, the department shall reinstate the original license for the remainder of its term, issue a new license, or revoke the original license.

(6) A right to an adjudicative proceeding shall not accrue to the licensee whose license has been placed on probationary status unless the licensee does not agree with the placement on probationary status and the department then suspends, revokes, or modifies the license. [1995 c 302 § 7.]

Intent—1995 c 302: See note following RCW 74.15.010.

74.15.127 Expedited foster licensing process. (1) The department shall design and implement an expedited foster licensing process.

(2) The expedited foster licensing process described in this section shall be available to individuals who:

(a) Were licensed within the last five years;

(b) Were not the subject of an adverse licensing action or a voluntary relinquishment;

(c) Seek licensure for the same residence for which he or she was previously licensed provided that any changes to family constellation since the previous license is limited to individuals leaving the family constellation; and

(d) Apply to the same agency for which he or she was previously licensed, with the understanding that the agency must be agreeable to supervise the home.

(3) The department shall make every effort to ensure that individuals qualifying for and seeking an expedited license are able to become licensed within forty days of the department receiving his or her application.

(4) The department shall only issue a foster license pursuant to this section after receiving a completed fingerprint-based background check, and may delay issuance of an expedited license solely based on awaiting the results of a background check.

(5) The department may issue a provisional expedited license pursuant to this section before completing a home study, but shall complete the home study as soon as possible after issuing a provisional expedited license.

(6) The department and its officers, agents, employees, and volunteers are not liable for injuries caused by the expedited foster licensing process. [2017 3rd sp.s. c 20 § 4.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

74.15.130 Licenses—Denial, suspension, revocation, modification—Procedures—Adjudicative proceedings—Penalties. (1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of a foster family home license, the department's decision shall be upheld if there is reasonable cause to believe that:

(a) The applicant or licensee lacks the character, suitability, or competence to care for children placed in out-of-home care, however, no unfounded, inconclusive, or screened-out report of child abuse or neglect may be used to deny employment or a license;

(b) The applicant or licensee has failed or refused to comply with any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements adopted pursuant to such provisions; or

(c) The conditions required for issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses.

(3) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, other than a foster family home license, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(4) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under the provisions of this chapter and RCW 74.13.031 or that an agency subject to licensing under this chapter and RCW 74.13.031 is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home. Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed two hundred fifty dollars per violation for group homes and child-placing agencies. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. Chapter 43.20A RCW governs notice of a civil monetary penalty and provides the right of an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties. [2007 c 220 § 6; 2006 c 265 § 404; 2005 c 473 § 6; 1998 c 314 § 6; 1995 c 302 § 5; 1989 c 175 § 149; 1982 c 118 § 12; 1979 c 141 § 362; 1967 c 172 § 13.]

Purpose—2005 c 473: See note following RCW 74.15.300.

Intent—1995 c 302: See note following RCW 74.15.010.

Additional notes found at www.leg.wa.gov

74.15.132 Adjudicative proceedings—Training for administrative law judges. (1) The office of administrative hearings shall not assign nor allow an administrative law judge to preside over an adjudicative hearing regarding denial, modification, suspension, or revocation of any license to provide child care, including foster care, under this chapter, unless such judge has received training related to state and federal laws and department policies and procedures regarding:

(a) Child abuse, neglect, and maltreatment;

(b) Child protective services investigations and standards;

(c) Licensing activities and standards;

(d) Child development; and

(e) Parenting skills.

(2) The office of administrative hearings shall develop and implement a training program that carries out the requirements of this section. The office of administrative hearings shall consult and coordinate with the department in developing the training program. The department may assist the office of administrative hearings in developing and providing training to administrative law judges. [1995 c 302 § 6.]

Intent—1995 c 302: See note following RCW 74.15.010.

74.15.134 License or certificate suspension—Noncompliance with support order—Reissuance. The secretary shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department as a person who is not in compliance with a support 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 secretary's receipt of a release issued by the department stating that the licensee is in compliance with the order. [2017 3rd sp.s. c 6 § 414; 1997 c 58 § 858.]

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 dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

74.15.140 Action against licensed or unlicensed agencies authorized. Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided

by law, upon the advice of the attorney general, who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or such other relief as he or she may deem advisable against any agency subject to licensing under the provisions of chapter 74.15 RCW and RCW 74.13.031 or against any such agency not having a license as heretofore provided in chapter 74.15 RCW and RCW 74.13.031. [2013 c 23 § 213; 1979 c 141 § 363; 1967 c 172 § 14.]

74.15.150 Penalty for operating without license. Any agency operating without a license shall be guilty of a misdemeanor. This section shall not be enforceable against an agency until sixty days after the effective date of new rules, applicable to such agency, have been adopted under chapter 74.15 RCW and RCW 74.13.031. [1982 c 118 § 13; 1967 c 172 § 15.]

74.15.160 Continuation of existing licensing rules. Existing rules for licensing adopted pursuant to *chapter 74.14 RCW, sections 74.14.010 through 74.14.150, chapter 26, Laws of 1959, shall remain in force and effect until new rules are adopted under chapter 74.15 RCW and RCW 74.13.031, but not thereafter. [1982 c 118 § 14; 1967 c 172 § 16.]

***Reviser's note:** Chapter 74.14 RCW was repealed by 1967 c 172 § 23.

74.15.170 Agencies, homes conducted by religious organizations—Application of chapter. Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents of any agency, children's institution, child-placing agency, maternity home, day or hourly nursery, foster home or other related institution conducted for or by members of a recognized religious sect, denomination or organization which in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, nor shall the existence of any of the above conditions militate against the licensing of such a home or institution. [1967 c 172 § 21.]

74.15.180 Designating home or facility as semi-secure facility. The department, pursuant to rules, may enable any licensed foster family home or group care facility to be designated as a semi-secure facility, as defined by RCW 13.32A.030. [1979 c 155 § 84.]

Additional notes found at www.leg.wa.gov

74.15.190 Authority of Indian tribes to license agencies within reservations—Placement of children. (1)(a) The state of Washington recognizes the authority of Indian tribes within the state to license agencies, located within the boundaries of a federally recognized Indian reservation, to receive children for control, care, and maintenance outside their own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care or adoption.

(b) The state of Washington recognizes the ability of the Indian tribes within the state to enter into agreements with the state to license agencies located on or near the federally recognized Indian reservation or, for those federally recognized tribes that do not have a reservation, then on or near the federally designated service delivery area, to receive children for control, care, and maintenance outside their own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care.

(c) The department and state licensed child-placing agencies may place children in tribally licensed facilities if the requirements of *RCW 74.15.030 (2)(b) and (3) and supporting rules are satisfied before placing the children in such facilities by the department or any state licensed child-placing agency.

(2) The department may enter into written agreements with Indian tribes within the state to define the terms under which the tribe may license agencies pursuant to subsection (1) of this section. The agreements shall include a definition of what are the geographic boundaries of the tribe for the purposes of licensing and may include locations on or near the federally recognized Indian reservation or, for those federally recognized tribes that do not have a reservation, then on or near the federally designated service delivery area.

(3) The department and its employees are immune from civil liability for damages arising from the conduct of agencies licensed by a tribe. [2006 c 90 § 2; 1987 c 170 § 13.]

***Reviser's note:** RCW 74.15.030(2)(b) was amended by 2007 c 387 § 5, changing the scope of the subsection.

Additional notes found at www.leg.wa.gov

74.15.200 Child abuse and neglect prevention training to parents and day care providers. The department shall have primary responsibility for providing child abuse and neglect prevention training to parents and licensed child day care providers of preschool age children participating in day care programs meeting the requirements of chapter 74.15 RCW. The department may limit training under this section to trainers' workshops and curriculum development using existing resources. [2017 3rd sp.s. c 6 § 415; 1987 c 489 § 5.]

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.

Intent—1987 c 489: See note following RCW 28A.300.150.

74.15.210 Community facility—Service provider must report juvenile infractions or violations—Violations by service provider—Secretary's duties—Rules. (1) Whenever the secretary contracts with a service provider to operate a community facility, the contract shall include a requirement that each service provider must report to the department any known infraction or violation of conditions committed by any juvenile under its supervision. The report must be made immediately upon learning of serious infractions or violations and within twenty-four hours for other infractions or violations.

(2) The secretary shall adopt rules to implement and enforce the provisions of this section. The rules shall contain a schedule of monetary penalties not to exceed the total compensation set forth in the contract, and include provisions that allow the secretary to terminate all contracts with a service provider that has violations of this section and the rules adopted under this section.

(3) The secretary shall document in writing all violations of this section and the rules adopted under this section, penalties, actions by the department to remove juveniles from a community facility, and contract terminations. The department shall give great weight to a service provider's record of violations, penalties, actions by the department to remove juveniles from a community facility, and contract terminations in determining to execute, renew, or renegotiate a contract with a service provider. [1998 c 269 § 7.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

74.15.230 Responsible living skills programs—Established—Requirements. The secretary shall establish responsible living skills programs that provide no more than seventy-five beds across the state and may establish responsible living skills programs by contract, within funds appropriated by the legislature specifically for this purpose. Responsible living skills programs shall have the following:

(1) A license issued by the secretary;

(2) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth available to serve residents or a bachelor of arts degree in social work or a related field and five years of experience working with street youth. The professional shall provide counseling services and interface with other relevant resources and systems to prepare the minor for adult living. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency;

(3) Staff trained in development needs of older adolescents eligible to participate in responsible living skills programs as determined by the secretary;

(4) Transitional living services and a therapeutic model of service delivery that provides necessary program supervision of residents and at the same time includes a philosophy, program structure, and treatment planning that emphasizes achievement of competency in independent living skills. Independent living skills include achieving basic educational requirements such as a high school equivalency certificate as provided in RCW 28B.50.536, enrollment in vocational and technical training programs offered at the community and vocational colleges, obtaining and maintaining employment; accomplishing basic life skills such as money management, nutrition, preparing meals, and cleaning house. A baseline skill level in ability to function productively and independently shall be determined at entry. Performance shall be measured and must demonstrate improvement from involvement in the program. Each resident shall have a plan for achieving independent living skills by the time the resident leaves the placement. The plan shall be written within the first thirty days of placement and reviewed every ninety days. A resident who fails to consistently adhere to the elements of the plan shall be subject to reassessment by the professional staff of the program and may be placed outside the program; and

(5) A data collection system that measures outcomes for the population served, and enables research and evaluation that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the secretary.

(6) The department shall not award contracts for the operation of responsible living skills programs until HOPE center beds are operational. [2013 c 39 § 31; 1999 c 267 § 13.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Additional notes found at www.leg.wa.gov

74.15.240 Responsible living skills program—Eligibility. To be eligible for placement in a responsible living skills program, the minor must be dependent under chapter 13.34 RCW and must have lived in a HOPE center or in a secure crisis residential center. However, if the minor's caseworker determines that placement in a responsible living skills program would be the most appropriate placement given the minor's current circumstances, prior residence in a HOPE center or secure crisis residential center before placement in a responsible living program is not required. Responsible living skills centers are intended as a placement alternative for dependent youth that the department chooses for the youth because no other services or alternative placements have been successful. Responsible living skills centers are not for dependent youth whose permanency plan includes return to home or family reunification. [2008 c 267 § 11; 1999 c 267 § 14.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.250 HOPE centers—Responsible living skills programs—Licensing authority—Rules. The secretary is authorized to license HOPE centers and responsible living skills programs that meet statutory and rule requirements created by the secretary. The secretary is authorized to develop rules necessary to carry out the provisions of sections 10 through 26, chapter 267, Laws of 1999. The secretary may rely upon existing licensing provisions in development of licensing requirements for HOPE centers and responsible living skills programs, as are appropriate to carry out the intent of sections 10 through 26, chapter 267, Laws of 1999. HOPE centers and responsible living skills programs shall be required to adhere to departmental regulations prohibiting the use of alcohol, tobacco, controlled substances, violence, and sexual activity between residents. [1999 c 267 § 15.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.255 Secure or semi-secure crisis residential centers and HOPE centers—Collaboration—Colocation—Requirement for licensing. (1)(a) Within available funds appropriated for this purpose, the department shall contract for a continuum of short-term stabilization services pursuant to RCW 13.32A.030 and *74.15.220. The department shall collaborate with service providers in a manner that allows secure and semi-secure crisis residential centers and HOPE centers to be located in a geographically representative manner and to facilitate the coordination of services provided for youth by such programs. To achieve efficiencies and increase utilization, the department shall allow the colocation of these centers in the same building or structure, except that a youth may not be placed in a secure facility or the secure portion of a colocated facility except as specifi-

cally authorized by chapter 13.32A RCW. The department shall allow the colocation of these centers only if the entity operating the facility agrees to designate a particular number of beds to each type of center that is located within the building or structure. The beds so designated must be used only to serve the eligible youth in the program or center for which they are designated.

(b) The department shall adopt rules to allow the licensing of colocated facilities that include any combination of secure or semi-secure crisis residential centers as defined in RCW 13.32A.030, or HOPE centers as defined in RCW 74.15.020. Such rules may provide for flexible payment structures, center specific licensing waivers, or other appropriate methods to increase utilization and provide flexibility, while continuing to meet the statutory goals of the programs. The rules shall provide that a condition of being licensed as a colocated facility is that the contracting entity must designate a particular number of beds in the colocated facility to each type of center that is located within the building or structure. The beds so designated must be used only to serve the eligible youth in the program or center for which they are designated.

(2) The department shall require that to be licensed or continue to be licensed as a secure or semi-secure crisis residential center or HOPE center that the center has on staff, or otherwise has access to, a person who has been trained to work with the needs of sexually exploited children. For purposes of this subsection, "sexually exploited child" means that person as defined in RCW 13.32A.030(17). [2011 c 240 § 3; 2010 c 289 § 10.]

***Reviser's note:** RCW 74.15.220 was recodified as RCW 43.185C.315 pursuant to 2015 c 69 § 30.

74.15.280 Emergency respite centers—Licensing—Rules. The secretary is authorized to license emergency respite centers. The department may adopt rules to specify licensing requirements for emergency respite centers. [2001 c 230 § 2.]

74.15.300 Enforcement action—Definition. For the purposes of chapter 473, Laws of 2005, "enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 74.15.130(1) or assessment of civil monetary penalties pursuant to RCW 74.15.130(4). [2005 c 473 § 2.]

Purpose—2005 c 473: "The legislature recognizes that child care providers provide valuable services for the families of Washington state and are an important part of ensuring the healthy growth and development of young children. It also recognizes the importance of ensuring that operators of child day-care centers and family day-care providers are providing safe and quality care and operating in compliance with minimal standards.

The legislature further recognizes that parents, as consumers, have an interest in obtaining access to information that is relevant to making informed decisions about the persons with whom they entrust the care of their children. The purpose of this act is to establish a system, consistent throughout the state, through which parents, guardians, and other persons acting in loco parentis can obtain certain information about child care providers." [2005 c 473 § 1.]

74.15.311 Resource and assessment centers—License. (1) The secretary is authorized to license resource and assessment centers if the agency meets the following requirements:

(a) There is a demonstrated need in the local community for a resource and assessment center;

(b) The resource and assessment center will be primarily staffed by trained volunteers; and

(c) The resource and assessment center demonstrates it is not financially dependent on reimbursement from the state to operate.

(2) The department may adopt rules to specify licensing requirements for resource and assessment centers. Rules adopted by the department shall allow:

(a) A sufficient number of trained volunteers to meet staffing requirements;

(b) Flexibility in hours of operation and not require the resource and assessment center to be open if there are no children in its care; and

(c) The ability to operate in a residential area.

(3) Resource and assessment centers licensed under this section may:

(a) Provide care for children ages birth through twelve, or for children ages thirteen through seventeen who have a sibling or siblings under thirteen years of age who are being admitted to the resource and assessment center; and

(b) Operate up to twenty-four hours per day, and for up to seven days per week.

(4) Resource and assessment centers may not be used to address placement disruptions for children who have been removed from a foster home because of behavior or safety concerns. [2013 c 105 § 3.]

Findings—Intent—2013 c 105: "The legislature finds that when a child is removed from his or her home due to suspected abuse or neglect it can take several hours or even days for placement plans to be made for the child during which time caseworkers have to care for the child while also trying to locate an appropriate placement for him or her. The legislature also finds that licensed foster homes are often unable to take a child into their home if his or her care needs have not been thoroughly assessed or he or she is in immediate need of health care or social services. The legislature further finds that there are organizations in our state that are providing or wanting to provide short-term emergency and crisis care for children under the age of thirteen; however, there is currently no appropriate, cost-effective licensure category for organizations to provide these services. The legislature intends to create a resource and assessment center license for agencies to provide short-term emergency and crisis care for children ages birth through twelve, or for children ages thirteen through seventeen who have a sibling under thirteen years of age who have been removed from their homes by child protective services or law enforcement. The legislature further intends that resource and assessment centers be reimbursed at the same rate as foster family homes." [2013 c 105 § 1.]

74.15.900 Short title—Purpose—Entitlement not granted—1999 c 267 §§ 10-26. Sections 10 through 26, chapter 267, Laws of 1999 may be referred to as the homeless youth prevention, protection, and education act, or the HOPE act. Every day many youth in this state seek shelter out on the street. A nurturing nuclear family does not exist for them, and state-sponsored alternatives such as foster homes do not meet the demand and isolate youth, who feel like outsiders in families not their own. The legislature recognizes the need to develop placement alternatives for dependent youth ages sixteen to eighteen, who are living on the street. The HOPE act is an effort to engage youth and provide them access to services through development of life skills in a setting that supports them. Nothing in sections 10 through 26, chapter 267, Laws of 1999 shall constitute an entitlement. [1999 c 267 § 10.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.901 Federal waivers—1999 c 267 §§ 10-26. (1) The department of social and health services shall seek any necessary federal waivers for federal funding of the programs created under sections 10 through 26, chapter 267, Laws of 1999. The department shall pursue federal funding sources for the programs created under sections 10 through 26, chapter 267, Laws of 1999, and report to the legislature any statutory barriers to federal funding.

(2) The department of children, youth, and families shall seek any necessary federal waivers for federal funding of the programs created under sections 10 through 26, chapter 267, Laws of 1999. The department shall pursue federal funding sources for the programs created under sections 10 through 26, chapter 267, Laws of 1999, and report to the legislature any statutory barriers to federal funding. [2017 3rd sp.s. c 6 § 416; 1999 c 267 § 23.]

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.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.902 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. Nothing in chapter 521, Laws of 2009 shall be construed as creating or requiring the creation of any medical assistance program, as that term is defined in RCW 74.09.010, for state registered domestic partners that is analogous to federal medical assistance programs extended to married persons. [2009 c 521 § 178.]

74.15.903 Construction—Religious or nonprofit organizations. Nothing contained in chapter 3, Laws of 2012 shall be construed to alter or affect existing law regarding the manner in which a religious or nonprofit organization may be licensed to and provide adoption, foster care, or other child-placing services under this chapter or chapter 74.13 or 26.33 RCW. [2012 c 3 § 16 (Referendum Measure No. 74, approved November 6, 2012).]

Notice—2012 c 3: See note following RCW 26.04.010.

Chapter 74.18 RCW
DEPARTMENT OF SERVICES FOR THE BLIND

Sections

74.18.010 Intent. The purposes of this chapter are to promote employment and independence of blind persons in the state of Washington through their complete integration into society on the basis of equality, and to encourage public acceptance of the abilities of blind persons. [2003 c 409 § 2; 1983 c 194 § 1.]

Findings—2003 c 409: "The legislature finds and declares the following:

(1) Thousands of citizens in the state have disabilities, including blindness or visual impairment, that prevent them from using conventional print material.

(2) Governmental and nonprofit organizations provide access to reading material by specialized means, including books and magazines prepared in braille, audio, and large-type formats.

(3) Access to time-sensitive or local or regional publications, or both, is not feasible to produce through these traditional means and formats.

(4) Lack of direct and prompt access to information included in newspapers, magazines, newsletters, schedules, announcements, and other time-sensitive materials limits educational opportunities, literacy, and full participation in society by people with print disabilities.

(5) Creation and storage of information by computer results in electronic files used for publishing and distribution.

(6) The use of high-speed computer and telecommunications technology combined with customized software provides a practical and cost-effective means to convert electronic text-based information, including daily newspapers, into synthetic speech suitable for statewide distribution by telephone.

(7) Telephonic distribution of time-sensitive information, including daily newspapers, will enhance the state's current efforts to meet the needs of blind and disabled citizens for access to information which is otherwise available in print, thereby reducing isolation and supporting full integration and equal access for such individuals." [2003 c 409 § 1.]

74.18.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means an agency of state government called the department of services for the blind.

(2) "Director" means the director of the department of services for the blind. The director is appointed by the governor with the consent of the senate.

(3) "Rehabilitation council for the blind" means the body of members appointed by the governor in accordance with the provisions of RCW 74.18.070 to advise the state agency.

(4) "Blind person" means a person who: (a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by individuals with normal vision; (b) has an eye condition of a progressive nature which may lead to blindness; or (c) is blind for purposes of the business enterprise program as set forth in RCW 74.18.200 through 74.18.230 in accordance with requirements of the Randolph-Sheppard Act of 1936.

(5) "Telephonic reading service" means audio information provided by telephone, including the acquisition and distribution of daily newspapers and other information of local, state, or national interest. [2003 c 409 § 3; 1983 c 194 § 2.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.030 Department created. There is hereby created an agency of state government to be known as the department of services for the blind. The department shall deliver services to blind persons to the extent that appropriations are made available, provided that applicants meet the eligibility criteria for services authorized by this chapter. [1983 c 194 § 3.]

74.18.040 Director—Appointment—Salary. The executive head of the department shall be the director of the department of services for the blind. The director shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The director's salary shall be fixed by the governor in accordance with the provisions of RCW 43.03.040. [1983 c 194 § 4.]

74.18.045 Telephonic reading service. (1)(a) The director shall provide access to a telephonic reading service for blind and disabled persons.

(b) The director shall establish criteria for eligibility for blind and disabled persons who may receive the telephonic reading services. The criteria may be based upon the eligibility criteria for persons who receive services established by the national library service for the blind and physically handicapped of the library of congress.

(2) The director may enter into contracts or other agreements that he or she determines to be appropriate to provide telephonic reading services pursuant to this section.

(3) The director may expand the type and scope of materials available on the telephonic reading service in order to meet the local, regional, or foreign language needs of blind or visually impaired residents of this state. The director may also expand the scope of services and availability of telephonic reading services by current methods and technologies that may be developed. The director may inform current and potential patrons of the availability of telephonic reading services through appropriate means, including, but not limited to, direct mailings, direct telephonic contact, and public service announcements.

(4) The director may expend moneys from the business enterprises revolving account accrued from vending machine sales in state and local government buildings, as well as donations and grants, for the purpose of supporting the cost of activities described in this section. [2003 c 409 § 4.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.050 Appointment of personnel. The director may appoint such personnel as necessary, none of whom shall be members of the rehabilitation council for the blind. The director and other personnel who are assigned substantial responsibility for formulating agency policy or directing and controlling a major administrative division, together with their confidential secretaries, up to a maximum of six persons, shall be exempt from the provisions of chapter 41.06 RCW. [2003 c 409 § 5; 1983 c 194 § 5.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.060 Department—Powers and duties. The department shall:

(1) Serve as the sole agency of the state for contracting for and disbursing all federal and state funds appropriated for programs established by and within the jurisdiction of this chapter, and make reports and render accounting as may be required;

(2) Adopt rules, in accordance with chapter 34.05 RCW, necessary to carry out the purposes of this chapter;

(3) Negotiate agreements with other state agencies to provide services so that individuals of any age who are blind or are both blind and otherwise disabled receive the most beneficial services. [2003 c 409 § 6; 1983 c 194 § 6.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.070 Rehabilitation council for the blind—Membership. (1) There is hereby created the rehabilitation council for the blind. The rehabilitation council shall consist of the minimum number of voting members to meet the requirements of the rehabilitation council required under the federal rehabilitation act of 1973 as now or hereafter amended. A majority of the voting members shall be blind persons. Rehabilitation councilmembers shall be residents of the state of Washington, and shall be appointed in accordance with the categories of membership specified in the federal rehabilitation act of 1973 as now or hereafter amended. The director of the department shall be an ex officio, nonvoting member.

(2) The governor shall appoint members of the rehabilitation council for terms of three years, except that the initial appointments shall be as follows: (a) Three members for terms of three years; (b) two members for terms of two years; and (c) other members for terms of one year. Vacancies in the membership of the rehabilitation council shall be filled by the governor for the remainder of the unexpired term.

(3) The governor may remove members of the rehabilitation council for cause. [2003 c 409 § 7; 2000 c 57 § 1; 1983 c 194 § 7.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.080 Rehabilitation council for the blind—Meetings—Travel expenses. (1) The rehabilitation council for the blind shall meet officially with the director of the department quarterly to perform the duties enumerated in RCW 74.18.090. Additional meetings of the rehabilitation council may be convened at the call of the chairperson or of a

majority of the members. The rehabilitation council shall elect a chairperson from among its members for a term of one year or until a successor has been elected.

(2) Rehabilitation councilmembers shall receive reimbursement for travel expenses incurred in the performance of their official duties in accordance with RCW 43.03.050 and 43.03.060. [2000 c 57 § 2; 1983 c 194 § 8.]

74.18.090 Rehabilitation council for the blind—Powers. The rehabilitation council for the blind may:

(1) Provide counsel to the director in developing, reviewing, making recommendations, and agreeing on the department's state plan for vocational rehabilitation, budget requests, permanent rules concerning services to blind persons, and other major policies which impact the quality or quantity of services for blind persons;

(2) Undertake annual reviews with the director of the needs of blind persons, the effectiveness of the services and priorities of the department to meet those needs, and the measures that could be taken to improve the department's services;

(3) Annually make recommendations to the governor and the legislature on issues related to the department, other state agencies, or state laws which have a significant effect on the opportunities, services, or rights of blind persons;

(4) Advise and make recommendations to the governor on the criteria and qualifications pertinent to the selection of the director;

(5) Perform additional functions as required by the federal rehabilitation act of 1973 as now or hereafter amended. [2003 c 409 § 8; 2000 c 57 § 3; 1983 c 194 § 9.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.100 Rehabilitation council for the blind—Director to consult. It shall be the duty of the director to consult in a timely manner with the rehabilitation council for the blind on the matters enumerated in RCW 74.18.090. The director shall provide appropriate departmental resources for the use of the rehabilitation council in conducting its official business. [2000 c 57 § 4; 1983 c 194 § 10.]

74.18.110 Receipt of gifts, grants, and bequests. The department may receive, accept, and disburse gifts, grants, conveyances, devises, and bequests from public or private sources, in trust or otherwise, if the terms and conditions thereof will provide services for blind persons in a manner consistent with the purposes of this chapter and with other provisions of law. Any money so received shall be deposited in the state treasury for investment or expenditure in accordance with the conditions of its receipt. [2003 c 409 § 9; 1983 c 194 § 11.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.120 Administrative hearing—Appeal—Rules. (1) An applicant or eligible person who is dissatisfied with a decision, action, or inaction made by the department or its agents regarding that person's eligibility or department services provided to that person is entitled to an administrative hearing. Such administrative hearings shall be conducted pursuant to chapter 34.05 RCW by an administrative law judge.

(2) The applicant or eligible individual may appeal final decisions issued following administrative hearings under RCW 34.05.510 through 34.05.598.

(3) The department shall develop rules governing other processes for dispute resolution as required under the federal rehabilitation act of 1973. [2003 c 409 § 10; 1989 c 175 § 150; 1983 c 194 § 12.]

Findings—2003 c 409: See note following RCW 74.18.010.

Additional notes found at www.leg.wa.gov

74.18.123 Background checks—Individuals having unsupervised access to persons with significant disabilities—Rules. (1) The department shall investigate the conviction records, pending charges, and disciplinary board final decisions of individuals acting on behalf of the department who will or may have unsupervised access to persons with significant disabilities as defined by the federal rehabilitation act of 1973. This includes:

(a) Current employees of the department;

(b) Applicants seeking or being considered for any position with the department; and

(c) Any service provider, contractor, student intern, volunteer, or other individual acting on behalf of the department.

(2) The investigation shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. The background check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. If the applicant or service provider has had a background check within the previous two years, the department may waive the requirement.

(3) When necessary, applicants may be employed and service providers may be engaged on a conditional basis pending completion of the background check.

(4) The department shall use the information solely to determine the character, suitability, and competence of employees, applicants, service providers, contractors, student interns, volunteers, and other individuals in accordance with RCW 41.06.475.

(5) The department shall adopt rules addressing procedures for undertaking background checks which shall include, but not be limited to, the following:

(a) The manner in which the individual will be provided access to and review of information obtained based on the background check required;

(b) Assurance that access to background check information shall be limited to only those individuals processing the information at the department;

(c) Action that shall be taken against a current employee, service provider, contractor, student intern, or volunteer who is disqualified from a position because of a background check not previously performed.

(6) The department shall determine who will pay costs associated with the background check. [2003 c 409 § 11.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.127 Confidentiality of personal information, records—Rules. (1) Personal information and records obtained and retained by the department concerning appli-

cants and eligible individuals are confidential, are not subject to public disclosure, and may be released only in accordance with law or with this provision.

(2) The department shall adopt rules and develop contract language to safeguard the confidentiality of all personal information, including photographs and lists of names. Rules and contract language shall ensure that:

(a) Specific safeguards are established to protect all current and future stored personal information;

(b) Specific safeguards and procedures are established for the release of personal health information in accordance with the health insurance portability and accountability act of 1996, 45 C.F.R. 160 through 45 C.F.R. 164;

(c) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed upon initial intake of the confidentiality of personal information and the conditions for accessing and releasing this information;

(d) All applicants or their representatives are informed about the department's need to collect personal information and the policies governing its use, including: (i) Identification of the authority under which information is collected; (ii) explanation of the principal purposes for which the department intends to use or release the information; (iii) explanation of whether providing requested information to the department is mandatory or voluntary and the effects of not providing requested information; (iv) identification of those situations in which the department requires or does not require informed written consent of the individual before information may be released; and (v) identification of other agencies to which information is routinely released; and

(e) An explanation of department policies and procedures affecting personal information will be provided at intake or on request to each individual in that individual's native language and in an appropriate format including but not limited to braille, audio recording, electronic media, or large print. [2003 c 409 § 12.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.130 Vocational rehabilitation—Eligibility. The department shall provide a program of vocational rehabilitation to assist blind persons to overcome barriers to employment and to develop skills necessary for employment and independence. Applicants eligible for vocational rehabilitation services shall be blind persons who also meet eligibility requirements as specified in the federal rehabilitation act of 1973. [2003 c 409 § 13; 1983 c 194 § 13.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.140 Vocational rehabilitation—Services. The department shall ensure that vocational rehabilitation services in accordance with requirements under the federal rehabilitation act of 1973 are available to meet the identified requirements of each eligible individual in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. [2003 c 409 § 14; 1983 c 194 § 14.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.150 Vocational rehabilitation—Grants of equipment and material. The department may grant to eligible participants in the vocational rehabilitation program equipment and materials in accordance with the provisions related to transfer of capital assets as set forth by the office of financial management in the state administrative and accounting manual, provided that the equipment or materials are required by the individual's plan for employment and are used in a manner consistent therewith. The department shall adopt rules to implement this section. [2003 c 409 § 15; 1996 c 7 § 1; 1983 c 194 § 15.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.170 Rehabilitation or habilitation facilities authorized. The department may establish, construct, and/or operate rehabilitation or habilitation facilities to provide instruction in alternative skills necessary to adjust to blindness or substantial vision loss, to assist blind persons to develop increased confidence and independence, or to provide other services consistent with the purposes of this chapter. The department shall adopt rules concerning selection criteria for participation, services, and other matters necessary for efficient and effective operation of such facilities. [2003 c 409 § 16; 1983 c 194 § 16.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.180 Services for independent living. (1) The department may provide a program of independent living services for blind persons who are not seeking vocational rehabilitation services.

(2) Independent living services may include, but are not limited to, instruction in adaptive skills of blindness, counseling regarding adjustment to vision loss, and provision of adaptive devices that enable service recipients to participate in the community and maintain or increase their independence. [2003 c 409 § 17; 1983 c 194 § 18.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.190 Services to blind children and their families. (1) The department may offer services to assist blind children and their families to learn skills and locate resources which increase the child's ability for personal development and participation in society.

(2) Services provided under this section may include:

(a) Direct consultation with blind children and their families to provide needs assessment, counseling, developmental training, adaptive skills, and information regarding other available resources;

(b) Consultation and technical assistance in all sectors of society, at the request of a blind child, his or her family, or a service provider working with the child or family, to assure the blind child's rights to participate fully in educational, vocational, and social opportunities. The department is encouraged to establish working agreements and arrangements with community organizations and other state agencies which provide services to blind children.

(3) To facilitate the coordination of services to blind children and their families, the office of superintendent of public instruction and the department of services for the blind shall negotiate an interagency agreement providing for coordinated service delivery and the sharing of information

between the two agencies, including an annual register of blind students in the state of Washington. [1983 c 194 § 19.]

74.18.200 Business enterprises program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply in RCW 74.18.200 through 74.18.230.

(1) "Business enterprises program" means a program operated by the department under the federal Randolph-Sheppard Act, 20 U.S.C. Sec. 107 et seq., and under this chapter in support of blind persons operating vending businesses in public buildings.

(2) "Vending facility" means any stand, snack bar, cafeteria, or business at which food, tobacco, sundries, or other retail merchandise or service is sold or provided.

(3) "Vending machine" means any coin-operated machine that sells or provides food, tobacco, sundries, or other retail merchandise or service.

(4) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual selects.

(5) "Licensee" means a blind person licensed by the state of Washington under the Randolph-Sheppard Act, this chapter, and the rules issued hereunder.

(6) "Public building" means any building and immediately adjacent outdoor space associated therewith, such as a patio or entryway, which is: (a) Owned by the state of Washington or any political subdivision thereof or any space leased by the state of Washington or any political subdivision thereof in any privately-owned building; and (b) dedicated to the administrative functions of the state or any political subdivision. However, this term shall not include property under the jurisdiction and control of a local board of education without the consent of such board.

(7) "Priority" means the department has first and primary right to operate the food service and vending facilities, including vending machines, on federal, state, county, municipal, and other local government property except those otherwise exempted by statute. Such right may, at the sole discretion of the department, be waived in the event that the department is temporarily unable to assert the priority. [2003 c 409 § 18; 1985 c 97 § 1; 1983 c 194 § 20.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.210 Business enterprises program—Purposes. The department shall maintain or cause to be maintained a business enterprises program for blind persons to operate vending facilities in public buildings. The purposes of the business enterprises program are to implement the Randolph-Sheppard Act and thereby give priority to qualified blind persons in operating vending facilities on federal property, to make similar provisions for vending facilities in public buildings in the state of Washington and thereby increase employment opportunities for blind persons, and to encourage blind persons to become successful, independent business persons. [2003 c 409 § 19; 1983 c 194 § 21.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.220 Business enterprises program—Vending facilities in public buildings. (1) The department is authorized to license blind persons to operate vending facilities and vending machines on federal property and in public buildings.

(2) The state, political subdivisions thereof, and agencies of the state, or political subdivisions thereof shall give priority to licensees in the operation of vending facilities and vending machines in public buildings. [1983 c 194 § 22.]

74.18.230 Business enterprises revolving account. (1) There is established in the state treasury an account known as the business enterprises revolving account.

(2) The net proceeds from any vending machine operation in a public building, other than an operation managed by a licensee, shall be made payable to the business enterprises program, which will pay only the blind vendors' portion, at the subscriber's rate, for the purpose of funding a plan of health insurance for blind vendors, as provided in RCW 41.05.225. Net proceeds, for purposes of this section, means gross sales less state sales tax and a fair minimum return to the vending machine owner or service provider, which return shall be a reasonable amount to be determined by the department.

(3) All federal moneys in the business enterprises revolving account shall be expended only for development and expansion of locations, equipment, management services, and payments to licensees in the business enterprises program.

(4) The business enterprises program shall be supported by the business enterprises revolving account and by income which may accrue to the department pursuant to the federal Randolph-Sheppard Act. [2003 c 409 § 20; 2002 c 71 § 2; 1993 c 369 § 1; 1991 sp.s. c 13 §§ 19, 116. Prior: 1985 c 97 § 2; 1985 c 57 § 72; 1983 c 194 § 23.]

Findings—2003 c 409: See note following RCW 74.18.010.

Additional notes found at www.leg.wa.gov

74.18.901 Conflict with federal requirements. If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict, and the findings or determination shall not affect the operation of the remainder of this chapter. [1983 c 194 § 25.]

Chapter 74.20 RCW
SUPPORT OF DEPENDENT CHILDREN

Sections

Child support registry: Chapter 26.23 RCW.

Temporary assistance for needy families: Chapter 74.12 RCW.

74.20.010 Purpose—Legislative intent—Chapter to be liberally construed. It is the responsibility of the state of Washington through the state department of social and health services to conserve the expenditure of public assistance funds, whenever possible, in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise to partially or completely meet the financial needs of the children of this state. The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency.

The purpose of this chapter is to provide the state of Washington, through the department of social and health services, a more effective and efficient way to effect the support of dependent children by the person or persons who, under the law, are primarily responsible for such support and to lighten the heavy burden of the taxpayer, who in many instances is paying toward the support of dependent children while those persons primarily responsible are avoiding their obligations. It is the intention of the legislature that the powers delegated to the said department in this chapter be liberally construed to the end that persons legally responsible for the care and support of children within the state be required to assume their legal obligations in order to reduce the financial cost to the state of Washington in providing public assistance funds for the care of children. It is the intention of the legislature that the department provide sufficient staff to carry out the purposes of this chapter, chapter 74.20A RCW, the abandonment and nonsupport statutes, and any applicable federal support enforcement statute administered by the department. It is also the intent of the legislature that the staff responsible for support enforcement be encouraged to conduct their support enforcement duties with fairness, courtesy, and the highest professional standards. [1979 ex.s. c 171 § 24; 1979 c 141 § 364; 1963 c 206 § 1; 1959 c 322 § 2.]

Additional notes found at www.leg.wa.gov

74.20.021 Definitions. See RCW 74.20A.020.

74.20.040 Duty of department to enforce child support—Requests for support enforcement services—Schedule of fees—Waiver—Rules. (1) Whenever the department receives an application for public assistance on behalf of a child, the department shall take appropriate action under the provisions of this chapter, chapter 74.20A RCW, or other appropriate statutes of this state to establish or enforce support obligations against the parent or other persons owing a duty to pay support moneys.

(2) The secretary may accept a request for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against the parent or other persons owing a duty to pay moneys. The secretary may condition requests accepted under this subsection upon the payment of a fee as required by subsection (6) of this section or through regulation issued by the secretary. The secretary may establish[,] by regulation, reasonable standards and qualifications for support enforcement services provided to persons who are not currently receiving public assistance.

(3) The secretary may accept requests for support enforcement services from child support enforcement agencies in other states operating child support programs under Title IV-D of the social security act or from foreign countries, and may take appropriate action to establish and enforce support obligations, or to enforce subpoenas, information requests, orders for genetic testing, and collection actions issued by the other agency against the parent or other person owing a duty to pay support moneys, the parent or other person's employer, or any other person or entity properly subject to child support collection or information-gathering processes. The request shall contain and be accompanied by such information and documentation as the secretary may by rule require, and be signed by an authorized representative of the agency. The secretary may adopt rules setting forth the duration and nature of services provided under this subsection.

(4) The department may take action to establish, enforce, and collect a support obligation, including performing related services, under this chapter and chapter 74.20A RCW, or through the attorney general or prosecuting attorney for action under chapter 26.09, 26.18, 26.20, 26.21A, 26.26A, or 26.26B RCW or other appropriate statutes or the common law of this state.

(5) Whenever a support order is filed with the Washington state support registry under chapter 26.23 RCW, the department may take appropriate action under the provisions of this chapter, chapter 26.23 or 74.20A RCW, or other appropriate law of this state to establish or enforce the sup-

port obligations contained in that order against the responsible parent or other persons owing a duty to pay support moneys.

(6)(a) Effective October 1, 2019, the secretary shall impose an annual fee of thirty-five dollars for each case in which support enforcement services are furnished where:

(i) The person entitled to receive support has never received assistance under the temporary assistance for needy families program, the aid for dependent families and children program, or a tribal temporary assistance for needy families program; and

(ii) The state has collected at least five hundred fifty dollars of support.

(b) The annual fee shall be retained by the state from support collected on behalf of the person entitled to receive support, but not from the first five hundred fifty dollars of support.

(c) The secretary may, on showing of necessity, waive or defer any such fee or cost.

(7) Fees, due and owing, may be retained from support payments directly or collected as delinquent support moneys utilizing any of the remedies in this chapter, chapter 74.20A or 26.21A RCW, or any other remedy at law or equity available to the department or any agencies with whom it has a cooperative or contractual arrangement to establish, enforce, or collect support moneys or support obligations.

(8) The secretary may waive the fee, or any portion thereof, as a part of a compromise of disputed claims or may grant partial or total charge off of said fee if the secretary finds there are no available, practical, or lawful means by which said fee may be collected or to facilitate payment of the amount of delinquent support moneys or fees owed.

(9) The secretary shall adopt rules conforming to federal laws, including but not limited to complying with section 7310 of the federal deficit reduction act of 2005, 42 U.S.C. Sec. 654, and rules and regulations required to be observed in maintaining the state child support enforcement program required under Title IV-D of the federal social security act. The adoption of these rules shall be calculated to promote the cost-effective use of the agency's resources and not otherwise cause the agency to divert its resources from its essential functions. [2019 c 275 § 4; 2019 c 46 § 5046; 2012 1st sp.s. c 4 § 1; 2011 1st sp.s. c 42 § 9; 2007 c 143 § 5; 1997 c 58 § 891; 1989 c 360 § 12; 1985 c 276 § 1; 1984 c 260 § 29; 1982 c 201 § 20; 1973 1st ex.s. c 183 § 1; 1971 ex.s. c 213 § 1; 1963 c 206 § 3; 1959 c 322 § 5.]

Reviser's note: This section was amended by 2019 c 46 § 5046 and by 2019 c 275 § 4, 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—2012 1st sp.s. c 4: "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 June 7, 2012." [2012 1st sp.s. c 4 § 3.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Additional notes found at www.leg.wa.gov

74.20.045 Employment status—Self-employed individuals—Enforcement. The office of support enforcement shall, as a matter of policy, use all available remedies for the enforcement of support obligations where the obligor is a self-employed individual. The office of support enforcement shall not discriminate in favor of certain obligors based upon employment status. [1994 c 299 § 16.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

74.20.055 Designated agency under federal law—Role of prosecuting attorneys. The department of social and health services office of support enforcement is the designated agency in Washington state to administer the child support program under Title IV-D of the federal social security act and is responsible for providing necessary and mandated support enforcement services and ensuring that such services are available statewide. It is the intent of the legislature to enhance the total child support program in this state by granting the office of support enforcement administrative powers and flexibility. If the exercise of this authority is used to supplant or replace the role of the prosecuting attorneys for reasons other than economy or federal compliance, the Washington association of prosecuting attorneys shall report to the committees on judiciary of the senate and house of representatives. [1985 c 276 § 17.]

74.20.057 Adjudicative proceedings—Role of department. When the department appears or participates in an adjudicative proceeding under chapter 26.23 or 74.20A RCW it shall:

(1) Act in furtherance of the state's financial interest in the matter;

(2) Act in the best interests of the children of the state;

(3) Facilitate the resolution of the controversy; and

(4) Make independent recommendations to ensure the integrity and proper application of the law and process.

In the proceedings the department does not act on behalf or as an agent or representative of an individual. [1994 c 230 § 18.]

74.20.060 Cooperation by person having custody of child—Penalty. Any person having the care, custody or control of any dependent child or children who shall fail or refuse to cooperate with the department of social and health services, any prosecuting attorney or the attorney general in the course of administration of provisions of this chapter shall be guilty of a misdemeanor. [1979 c 141 § 365; 1959 c 322 § 7.]

74.20.065 Wrongful deprivation of custody—Legal custodian excused from support payments. If the legal custodian has been wrongfully deprived of physical custody, the department is authorized to excuse the custodian from support payments for a child or children receiving or on whose behalf public assistance was provided under chapter 74.12 RCW, or for a child or children on behalf of whom the department is providing nonassistance support enforcement services. [2002 c 199 § 4; 1983 1st ex.s. c 41 § 31.]

Additional notes found at www.leg.wa.gov

74.20.101 Payment of support moneys to state support registry—Notice—Effects of noncompliance. (1) A responsible parent shall make all support payments through

the office of support enforcement or the Washington state support registry if:

(a) The parent's support order contains a provision directing the parent to make support payments through the office of support enforcement or the Washington state support registry; or

(b) If the parent has received written notice from the office of support enforcement under RCW 26.23.110, 74.20A.040, or 74.20A.055 that all future support payments must be made through the office of support enforcement or the Washington state support registry.

(2) A responsible parent who has been ordered or notified to make support payments to the office of support enforcement or the Washington state support registry shall not receive credit for payments which are not paid to the office of support enforcement or the Washington state support registry unless:

(a) The department determines that the granting of credit would not prejudice the rights of the residential parent or other person or agency entitled to receive the support payments and circumstances of an equitable nature exist; or

(b) A court, after a hearing at which all interested parties were given an opportunity to be heard, on equitable principles, orders that credit be given.

(3) The rights of the payee under an order for support shall not be prejudiced if the department grants credit under subsection (2)(a) of this section. If the department determines that credit should be granted pursuant to subsection (2) of this section, the department shall mail notice of its decision to the last known address of the payee, together with information about the procedure to contest the determination. [1989 c 360 § 7; 1987 c 435 § 30; 1979 ex.s. c 171 § 13; 1973 1st ex.s. c 183 § 2; 1969 ex.s. c 173 § 16.]

Additional notes found at www.leg.wa.gov

74.20.160 Department may disclose information to internal revenue department. Notwithstanding the provisions of RCW 74.04.060, upon approval of the department of health, education and welfare of the federal government, the department of social and health services may disclose to and keep the internal revenue department of the treasury of the United States advised of the names of all persons who are under legal obligation to support any dependent child or children and who are not doing so, to the end that the internal revenue department may have available to it the names of such persons for review in connection with income tax returns and claims of dependencies made by persons filing income tax returns. [1979 c 141 § 366; 1963 c 206 § 5; 1959 c 322 § 17.]

74.20.210 Attorney general may act under Uniform Reciprocal Enforcement of Support Act pursuant to agreement with prosecuting attorney. The prosecuting attorney of any county except a county with a population of one million or more may enter into an agreement with the attorney general whereby the duty to initiate petitions for support authorized under the provisions of *chapter 26.21 RCW as it is now or hereafter amended (**Uniform Reciprocal Enforcement of Support Act) in cases where the petitioner has applied for or is receiving public assistance on behalf of a dependent child or children shall become the duty of the attorney general. Any such agreement may also provide that the attorney general has the duty to represent the petitioner in intercounty proceedings within the state initiated by the attorney general which involve a petition received from another county. Upon the execution of such agreement, the attorney general shall be empowered to exercise any and all powers of the prosecuting attorney in connection with said petitions. [1991 c 363 § 150; 1969 ex.s. c 173 § 14; 1963 c 206 § 6.]

Reviser's note: *(1) Chapter 26.21 RCW was repealed by 2002 c 198 § 901, effective January 1, 2007. Later enactment, see chapter 26.21A RCW.

**(2) The "Uniform Reciprocal Enforcement of Support Act" was redesignated the "Uniform Interstate Family Support Act" by 1993 c 318.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

74.20.220 Powers of department through the attorney general or prosecuting attorney. In order to carry out its responsibilities imposed under this chapter and as required by federal law, the state department of social and health services, through the attorney general or prosecuting attorney, is hereby authorized to:

(1) Initiate an action in superior court to obtain a support order or obtain other relief related to support for a dependent child on whose behalf the department is providing public assistance or support enforcement services under RCW 74.20.040, or to enforce a superior court order.

(2) Appear as a party in dissolution, child support, parentage, maintenance suits, or other proceedings, for the purpose of representing the financial interest and actions of the state of Washington therein.

(3) Petition the court for modification of a superior court order when the office of support enforcement is providing support enforcement services under RCW 74.20.040.

(4) When the attorney general or prosecuting attorney appears in, defends, or initiates actions to establish, modify, or enforce child support obligations he or she represents the state, the best interests of the child relating to parentage, and the best interests of the children of the state, but does not represent the interests of any other individual.

(5) If public assistance has been applied for or granted on behalf of a child of parents who are divorced or legally separated, the attorney general or prosecuting attorney may apply to the superior court in such action for an order directing either parent or both to show cause:

(a) Why an order of support for the child should not be entered, or

(b) Why the amount of support previously ordered should not be increased, or

(c) Why the parent should not be held in contempt for his or her failure to comply with any order of support previously entered.

(6) Initiate any civil proceedings deemed necessary by the department to secure reimbursement from the parent or parents of minor dependent children for all moneys expended by the state in providing assistance or services to said children.

(7) Nothing in this section limits the authority of the attorney general or prosecuting attorney to use any and all civil and criminal remedies to enforce, establish, or modify child support obligations whether or not the custodial parent receives public assistance. [1991 c 367 § 44; 1979 c 141 §

367; 1973 1st ex.s. c 154 § 112; 1969 ex.s. c 173 § 15; 1963 c 206 § 7.]

Additional notes found at www.leg.wa.gov

74.20.225 Subpoena authority—Enforcement. In carrying out the provisions of this chapter or chapters 26.18, 26.23, 26.26A, 26.26B, and 74.20A RCW, the secretary and other duly authorized officers of the department may subpoena witnesses, take testimony, and compel the production of such papers, books, records, and documents as they may deem relevant to the performance of their duties. The division of child support may enforce subpoenas issued under this power according to RCW 74.20A.350. [2019 c 46 § 5047; 1997 c 58 § 898.]

Additional notes found at www.leg.wa.gov

74.20.230 Petition for support order by married parent with minor children who are receiving public assistance. Any married parent with minor children, natural or legally adopted children who is receiving public assistance may apply to the superior court of the county in which such parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for such spouse's support and the support of such spouse's minor children by filing in such county a petition setting forth the facts and circumstances upon which such spouse relies for such order. If it appears to the satisfaction of the court that such parent is without funds to employ counsel, the state department of social and health services through the attorney general may file such petition on behalf of such parent. If satisfied that a just cause exists, the court shall direct that a citation issue to the other spouse requiring such spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter. [1973 1st ex.s. c 154 § 113; 1963 c 206 § 8.]

Additional notes found at www.leg.wa.gov

74.20.240 Petition for support order by married parent with minor children who are receiving public assistance—Order—Powers of court. (1) After the hearing of the petition for an order of support the court shall make an order granting or denying it and fixing, if allowed, the terms and amount of the support. (2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, to make such decree or orders as are equitable in view of the circumstances of both parties and to punish violations thereof as other contempts are punished. [1963 c 206 § 9.]

74.20.250 Petition for support order by married parent with minor children who are receiving public assistance—Waiver of filing fees. The court may, upon satisfactory showing that the petitioner is without funds to pay the filing fee, order that the petition and other papers be filed without payment of the fee. [1963 c 206 § 10.]

74.20.260 Financial statements by parent whose absence is basis of application for public assistance. Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child shall be required to complete a statement, under oath, of his or her current monthly income, his or her total income over the past twelve months, the number of dependents for whom he or she is providing support, the amount he or she is contributing regularly toward the support of all children for whom application for such assistance is made, his or her current monthly living expenses, and such other information as is pertinent to determining his or her ability to support his or her children. Such statement shall be provided upon demand made by the state department of social and health services or attorney general, and if assistance based upon such application is granted on behalf of such child, additional statements shall be filed annually thereafter with the state department of social and health services until such time as the child is no longer receiving such assistance. Failure to comply with this section shall constitute a misdemeanor. [2013 c 23 § 214; 1979 c 141 § 368; 1963 c 206 § 11.]

74.20.280 Central unit for information and administration—Cooperation enjoined—Availability of records. The department is authorized and directed to establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning the parents of dependent children, to coordinate and supervise departmental activities in relation to such parents, to assure effective cooperation with law enforcement agencies, and to perform other functions authorized by state and federal support enforcement and child custody statutes and regulations.

To effectuate the purposes of this section, the secretary may request from state, county and local agencies all information and assistance as authorized by this chapter. Upon the request of the department of social and health services, all state, county and city agencies, officers and employees shall cooperate in the location of the parents of a dependent child and shall supply the department with all information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential.

Any records established pursuant to the provisions of this section shall be available only to the attorney general, prosecuting attorneys, courts having jurisdiction in support and/or abandonment proceedings or actions, or other authorized agencies or persons for use consistent with the intent of state and federal support enforcement and child custody statutes and regulations. [1983 1st ex.s. c 41 § 15; 1979 c 141 § 370; 1963 c 206 § 13.]

Additional notes found at www.leg.wa.gov

74.20.300 Department exempt from fees relating to paternity or support. No filing or recording fees, court fees, or fees for making copies of documents shall be required from the state department of social and health services by any county clerk, county auditor, or other county officer for the filing of any actions or documents necessary to establish paternity or enforce or collect support moneys.

Filing fees shall also not be required of any prosecuting attorney or the attorney general for action to establish paternity or enforce or collect support moneys. [1979 ex.s. c 171 § 1; 1973 1st ex.s. c 183 § 3; 1963 c 206 § 15.]

Additional notes found at www.leg.wa.gov

74.20.310 Guardian ad litem in actions brought to determine parent and child relationship—Notice. (1) The provisions of RCW 26.26A.485 requiring appointment of a guardian ad litem to represent the child in an action brought to determine the parent and child relationship do not apply to actions brought under chapter 26.26A or 26.26B RCW if:

(a) The action is brought by the attorney general on behalf of the department of social and health services and the child; or

(b) The action is brought by any prosecuting attorney on behalf of the state and the child when referral has been made to the prosecuting attorney by the department of social and health services requesting such action.

(2) On the issue of parentage, the attorney general or prosecuting attorney functions as the child's guardian ad litem provided the interests of the state and the child are not in conflict.

(3) The court, on its own motion or on motion of a party, may appoint a guardian ad litem when necessary.

(4) The summons shall contain a notice to the parents that pursuant to RCW 26.26A.485 the parents have a right to move the court for a guardian ad litem for the child other than the prosecuting attorney or the attorney general subject to subsection (2) of this section. [2019 c 46 § 5048; 2002 c 302 § 705; 1991 c 367 § 45; 1979 ex.s. c 171 § 15.]

Additional notes found at www.leg.wa.gov

74.20.320 Custodian to remit support moneys when department has support obligation—Noncompliance. Whenever a custodian of children, or other person, receives support moneys paid to them which moneys are paid in whole or in part in satisfaction of a support obligation which has been assigned to the department pursuant to Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 or RCW 74.20.330 or to which the department is owed a debt pursuant to RCW 74.20A.030, the moneys shall be remitted to the department within eight days of receipt by the custodian or other person. If not so remitted the custodian or other person shall be indebted to the department as a support debt in an amount equal to the amount of the support money received and not remitted.

By not paying over the moneys to the department, a custodial parent or other person is deemed, without the necessity of signing any document, to have made an irrevocable assignment to the department of any support delinquency owed which is not already assigned to the department or to any support delinquency which may accrue in the future in an amount equal to the amount of support money retained. The department may utilize the collection procedures in chapter 74.20A RCW to collect the assigned delinquency to effect recoupment and satisfaction of the debt incurred by reason of the failure of the custodial parent or other person to remit. The department is also authorized to make a set-off to effect satisfaction of the debt by deduction from support moneys in its possession or in the possession of any clerk of the court or other forwarding agent which are paid to the custodial parent or other person for the satisfaction of any support delinquency. Nothing in this section authorizes the department to make set-off as to current support paid during the month for which the payment is due and owing. [1997 c 58 § 935; 1979 ex.s. c 171 § 17.]

Additional notes found at www.leg.wa.gov

74.20.330 Payment of public assistance as assignment of rights to support. (1) Whenever public assistance is paid under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, and the federal deficit reduction act of 2005, each applicant or recipient is deemed to have made assignment to the department of any rights to a support obligation from any other person the applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving public assistance, including any unpaid support obligation or support debt which has accrued at the time the assignment is made.

(2) Payment of public assistance under a state-funded program, or a program funded under Title IV-A, IV-E, or XIX of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 shall:

(a) Operate as an assignment by operation of law; and

(b) Constitute an authorization to the department to provide the assistance recipient with support enforcement services.

(3) Effective October 1, 2008, whenever public assistance is paid under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, and the federal deficit reduction act of 2005, a member of the family is deemed to have made an assignment to the state any right the family member may have, or on behalf of the family member receiving such assistance, to support from any other person, not exceeding the total amount of assistance paid to the family, which accrues during the period that the family receives assistance under the program. [2012 1st sp.s. c 4 § 2; 2011 1st sp.s. c 42 § 10; 2007 c 143 § 6; 2000 c 86 § 6; 1997 c 58 § 936; 1989 c 360 § 13; 1988 c 275 § 19; 1985 c 276 § 3; 1979 ex.s. c 171 § 22.]

Effective date—2012 1st sp.s. c 4: See note following RCW 74.20.040.

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Additional notes found at www.leg.wa.gov

74.20.340 Employees' case workload standards. The department shall develop workload standards for each employee classification involved in support enforcement activities for each category of support enforcement cases. [1998 c 245 § 150; 1979 ex.s. c 171 § 25.]

Additional notes found at www.leg.wa.gov

74.20.350 Costs and attorneys' fees. In order to facilitate and ensure compliance with Title IV-D of the federal social security act, now existing or hereafter amended, wherein the state is required to undertake to establish parentage of such children as are born out of wedlock, the secretary of social and health services may pay the reasonable and proper fees of attorneys admitted to practice before the courts

of this state, who are engaged in private practice for the purpose of maintaining actions under chapter 26.26A or 26.26B RCW on behalf of such children, to the end that parent and child relationships be determined and financial support obligations be established by superior court order. The secretary or the secretary's designee shall make the determination in each case as to which cases shall be referred for representation by such private attorneys. The secretary may advance, pay, or reimburse for payment of, such reasonable costs as may be attendant to an action under chapter 26.26A or 26.26B RCW. The representation by a private attorney shall be only on behalf of the subject child, the custodial natural parent, and the child's personal representative or guardian ad litem, and shall not in any manner be, or be construed to be, in representation of the department of social and health services or the state of Washington, such representation being restricted to that provided pursuant to chapters 43.10 and 36.27 RCW. [2019 c 46 § 5049; 1979 ex.s. c 171 § 19.]

Additional notes found at www.leg.wa.gov

74.20.360 Orders for genetic testing. (1) The division of child support may issue an order for genetic testing when providing services under this chapter and Title IV-D of the federal social security act if genetic testing:

(a) Is appropriate in an action under chapter 26.26A RCW, the uniform parentage act;

(b) Is appropriate in an action to establish support under RCW 74.20A.056; or

(c) Would assist the parties or the division of child support in determining whether it is appropriate to proceed with an action to establish or disestablish parentage.

(2) The order for genetic testing shall be served on the alleged genetic parent or parents and the legal parent by personal service or by any form of mail requiring a return receipt.

(3) Within twenty days of the date of service of an order for genetic testing, any party required to appear for genetic testing, the child, or a guardian on the child's behalf, may petition in superior court under chapter 26.26A RCW to bar or postpone genetic testing.

(4) The order for genetic testing shall contain:

(a) An explanation of the right to proceed in superior court under subsection (3) of this section;

(b) Notice that if no one proceeds under subsection (3) of this section, the agency issuing the order will schedule genetic testing and will notify the parties of the time and place of testing by regular mail;

(c) Notice that the parties must keep the agency issuing the order for genetic testing informed of their residence address and that mailing a notice of time and place for genetic testing to the last known address of the parties by regular mail constitutes valid service of the notice of time and place;

(d) Notice that the order for genetic testing may be enforced through:

(i) Public assistance grant reduction for noncooperation, pursuant to agency rule, if the child and custodian are receiving public assistance;

(ii) Termination of support enforcement services under Title IV-D of the federal social security act if the child and custodian are not receiving public assistance;

(iii) A referral to superior court for an appropriate action under chapter 26.26A RCW; or

(iv) A referral to superior court for remedial sanctions under RCW 7.21.060.

(5) The department may advance the costs of genetic testing under this section.

(6) If an action is pending under chapter 26.26A RCW, a judgment for reimbursement of the cost of genetic testing may be awarded under RCW 26.26A.330.

(7) If no action is pending in superior court, the department may impose an obligation to reimburse costs of genetic testing according to rules adopted by the department to implement RCW 74.20A.056. [2019 c 46 § 5050; 2002 c 302 § 706; 1997 c 58 § 901.]

Additional notes found at www.leg.wa.gov

74.20.901 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 § 179.]

Chapter 74.20A RCW
SUPPORT OF DEPENDENT CHILDREN—ALTERNATIVE METHOD—1971 ACT

Sections

Birth certificate—Establishing paternity: RCW 70.58.080.

Child support enforcement: Chapter 26.18 RCW.

Child support registry: Chapter 26.23 RCW.

74.20A.010 Purpose—Remedies additional. Common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations. The state of Washington, therefore, exercising its police and sovereign power, declares that the common law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by additional remedies directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this chapter be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs. [1971 ex.s. c 164 § 1.]

74.20A.020 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter and chapter 74.20 RCW shall have the following meanings:

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

(2) "Secretary" means the secretary of the department of social and health services, the secretary's designee or authorized representative.

(3) "Dependent child" means any person:

(a) Under the age of eighteen who is not self-supporting, married, or a member of the armed forces of the United States; or

(b) Over the age of eighteen for whom a court order for support exists.

(4) "Support obligation" means the obligation to provide for the necessary care, support, and maintenance, including medical expenses, of a dependent child or other person as required by statutes and the common law of this or another state.

(5) "Superior court order" means any judgment, decree, or order of the superior court of the state of Washington, or a court of comparable jurisdiction of another state, establishing the existence of a support obligation and ordering payment of a set or determinable amount of support moneys to satisfy the support obligation. For purposes of RCW 74.20A.055, orders for support which were entered under the uniform reciprocal enforcement of support act by a state where the responsible parent no longer resides shall not preclude the department from establishing an amount to be paid as current and future support.

(6) "Administrative order" means any determination, finding, decree, or order for support pursuant to RCW 74.20A.055, or by an agency of another state pursuant to a substantially similar administrative process, establishing the existence of a support obligation and ordering the payment of a set or determinable amount of support moneys to satisfy the support obligation.

(7) "Responsible parent" means a natural parent, adoptive parent, or stepparent of a dependent child or a person who has signed an affidavit acknowledging paternity which has been filed with the state office of vital statistics.

(8) "Stepparent" means the present spouse of the person who is either the mother, father, or adoptive parent of a dependent child, and such status shall exist until terminated as provided for in RCW 26.16.205.

(9) "Support moneys" means any moneys or in-kind providings paid to satisfy a support obligation whether denominated as child support, spouse support, alimony, maintenance, or any other such moneys intended to satisfy an obligation for support of any person or satisfaction in whole or in part of arrears or delinquency on such an obligation.

(10) "Support debt" means any delinquent amount of support moneys which is due, owing, and unpaid under a superior court order or an administrative order, a debt for the payment of expenses for the reasonable or necessary care, support, and maintenance, including medical expenses, of a

dependent child or other person for whom a support obligation is owed; or a debt under RCW 74.20A.100 or 74.20A.270. Support debt also includes any accrued interest, fees, or penalties charged on a support debt, and attorneys fees and other costs of litigation awarded in an action to establish and enforce a support obligation or debt.

(11) "State" means any state or political subdivision, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(12) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(13) "Child support order" means a superior court order or an administrative order.

(14) "Financial institution" means:

(a) A depository institution, as defined in section 3(c) of the federal deposit insurance act;

(b) An institution-affiliated party, as defined in section 3(u) of the federal deposit insurance act;

(c) Any federal or state credit union, as defined in section 101 of the federal credit union act, including an institution-affiliated party of such credit union, as defined in section 206(r) of the federal deposit insurance act; or

(d) Any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity.

(15) "License" means a license, certificate, registration, permit, approval, or other similar document issued by a licensing entity to a licensee evidencing admission to or granting authority to engage in a profession, occupation, business, industry, recreational pursuit, or the operation of a motor vehicle. "License" does not mean the tax registration or certification issued under Title 82 RCW by the department of revenue.

(16) "Licensee" means any individual holding a license, certificate, registration, permit, approval, or other similar document issued by a licensing entity evidencing admission to or granting authority to engage in a profession, occupation, business, industry, recreational pursuit, or the operation of a motor vehicle.

(17) "Licensing entity" includes any department, board, commission, or other organization authorized to issue, renew, suspend, or revoke a license authorizing an individual to engage in a business, occupation, profession, industry, recreational pursuit, or the operation of a motor vehicle, and includes the Washington state supreme court, to the extent that a rule has been adopted by the court to implement suspension of licenses related to the practice of law.

(18) "Noncompliance with a child support order" for the purposes of the license suspension program authorized under RCW 74.20A.320 means a responsible parent has:

(a) Accumulated arrears totaling more than six months of child support payments;

(b) Failed to make payments pursuant to a written agreement with the department towards a support arrearage in an amount that exceeds six months of payments; or

(c) Failed to make payments required by a superior court order or administrative order towards a support arrearage in an amount that exceeds six months of payments.

(19) "Noncompliance with a residential or visitation order" means that a court has found the parent in contempt of court under RCW 26.09.160(3) for failure to comply with a residential provision of a court-ordered parenting plan. [1997 c 58 § 805; 1990 1st ex.s. c 2 § 15. Prior: 1989 c 175 § 151; 1989 c 55 § 1; 1985 c 276 § 4; 1979 ex.s. c 171 § 3; 1971 ex.s. c 164 § 2.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Birth certificate—Establishing paternity: RCW 70.58.080.

Additional notes found at www.leg.wa.gov

74.20A.030 Department subrogated to rights for support—Enforcement actions—Certain parents exempt. (1) The department shall be subrogated to the right of any dependent child or children or person having the care, custody, and control of said child or children, if public assistance money is paid to or for the benefit of the child, or for the care and maintenance of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, under a state-funded program, or a program funded under Title IV-A or IV-E of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, and the federal deficit reduction act of 2005, to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the state of Washington to obtain reimbursement of moneys expended, based on the support obligation of the responsible parent established by a child support order. Distribution of any support moneys shall be made in accordance with RCW 26.23.035.

(2) The department may initiate, continue, maintain, or execute an action to establish, enforce, and collect a support obligation, including establishing parentage and performing related services, under this chapter and chapter 74.20 RCW, or through the attorney general or prosecuting attorney under chapter 26.09, 26.18, 26.20, 26.21A, 26.23, 26.26A, or 26.26B RCW or other appropriate statutes or the common law of this state, for so long as and under such conditions as the department may establish by regulation.

(3) Public assistance moneys shall be exempt from collection action under this chapter except as provided in RCW 74.20A.270.

(4) No collection action shall be taken against parents of children eligible for admission to, or children who have been discharged from, a residential habilitation center as defined by RCW 71A.10.020 unless the child with a developmental disability is placed as a result of an action under chapter 13.34 RCW. The child support obligation shall be calculated pursuant to chapter 26.19 RCW. [2019 c 46 § 5051; 2007 c 143 § 7; 2004 c 183 § 5; 2000 c 86 § 7; 1997 c 58 § 934; 1993 sp.s. c 24 § 926; 1989 c 360 § 14. Prior: 1988 c 275 § 20; 1988 c 176 § 913; 1987 c 435 § 31; 1985 c 276 § 5; 1984 c 260 § 40; 1979 ex.s. c 171 § 4; 1979 c 141 § 371; 1973 1st ex.s. c 183 § 4; 1971 ex.s. c 164 § 3.]

Additional notes found at www.leg.wa.gov

74.20A.035 Augmentation of paternity establishment services. The department of social and health services shall augment its present paternity establishment services through the hiring of additional assistant attorneys general, or contracting with prosecutors or private attorneys licensed in the state of Washington in those judicial districts experiencing

delay or an accumulation of unserved paternity cases. The employment of private attorneys shall be limited in scope to renewable six-month periods in judicial districts where the prosecutor or the attorney general cannot provide adequate, cost-effective service. The department of social and health services shall provide a written report of the circumstances requiring employment of private attorneys to the judiciary committees of the senate and house of representatives and provide copies of such reports to the office of the attorney general and to the Washington association of prosecuting attorneys. [1987 c 441 § 3.]

Legislative findings—1987 c 441: "The state of Washington through the department of social and health services is required by state and federal statutes to provide paternity establishment services. These statutes require that reasonable efforts to establish paternity be made, if paternity of the child is in question, in all public assistance cases and whenever such services are requested in nonassistance cases.

The increasing number of children being born out of wedlock together with improved awareness of the benefits to the child and society of having paternity established have resulted in a greater demand on the existing judicial paternity establishment system." [1987 c 441 § 1.]

74.20A.040 Notice of support debt—Service or mailing—Contents—Action on, when. (1) The secretary may issue a notice of a support debt accrued and/or accruing based upon RCW 74.20A.030, assignment of a support debt or a request for support enforcement services under RCW 74.20.040 (2) or (3), to enforce and collect a support debt created by a superior court order or administrative order. The payee under the order shall be informed when a notice of support debt is issued under this section.

(2) The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action or be mailed to the debtor at his or her last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the support debt accrued and/or accruing, computable on the amount required to be paid under any superior court order to which the department is subrogated or is authorized to enforce and collect under RCW 74.20A.030, has an assigned interest, or has been authorized to enforce pursuant to RCW 74.20.040 (2) or (3);

(b) A statement that the property of the debtor is subject to collection action;

(c) A statement that the property is subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and

(d) A statement that the net proceeds will be applied to the satisfaction of the support debt.

(4) Action to collect a support debt by lien and foreclosure, or distraint, seizure and sale, or order to withhold and deliver shall be lawful after twenty days from the date of service upon the debtor or twenty days from the receipt or refusal by the debtor of said notice of debt.

(5) The secretary shall not be required to issue or serve such notice of support debt prior to taking collection action under this chapter when a responsible parent's support order:

(a) Contains language directing the parent to make support payments to the Washington state support registry; and

(b) Includes a statement that income-withholding action under this chapter may be taken without further notice to the responsible parent, as provided in RCW 26.23.050(1). [2013 c 23 § 215; 1989 c 360 § 8; 1985 c 276 § 2; 1973 1st ex.s. c 183 § 5; 1971 ex.s. c 164 § 4.]

74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions—Rules. (1) The secretary may, if there is no order that establishes the responsible parent's support obligation or specifically relieves the responsible parent of a support obligation or pursuant to an establishment of parentage under chapter 26.26A or 26.26B RCW, serve on the responsible parent or parents and custodial parent a notice and finding of financial responsibility requiring the parents to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department. A custodian who has physical custody of a child has the same rights that a custodial parent has under this section.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the dependent child or children on whose behalf support is sought. If the notice is not served within sixty days from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: PROVIDED, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located. The notice may be served upon the custodial parent who is the nonassistance applicant or public assistance recipient by first-class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent.

(3) The notice and finding of financial responsibility shall set forth the amount the department has determined the responsible parent owes, the support debt accrued and/or accruing, and periodic payments to be made in the future. The notice and finding shall also include:

(a) A statement of the name of the custodial parent and the name of the child or children for whom support is sought;

(b) A statement of the amount of periodic future support payments as to which financial responsibility is alleged;

(c) A statement that the responsible parent or custodial parent may object to all or any part of the notice and finding, and file an application for an adjudicative proceeding to show cause why the terms set forth in the notice should not be ordered;

(d) A statement that, if neither the responsible parent nor the custodial parent files in a timely fashion an application for an adjudicative proceeding, the support debt and payments

stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt and amounts due under the notice shall be subject to collection action;

(e) A statement that the property of the debtor, without further advance notice or hearing, will be subject to lien and foreclosure, distraint, seizure and sale, order to withhold and deliver, notice of payroll deduction or other collection action to satisfy the debt and enforce the support obligation established under the notice;

(f) A statement that one or both parents are responsible for either:

(i) Providing health care coverage for the child if accessible coverage that can cover the child:

(A) Is available through health insurance or public health care coverage; or

(B) Is or becomes available to the parent through that parent's employment or union; or

(ii) Paying a monthly payment toward the premium if no such coverage is available, as provided under RCW 26.09.105.

(4) A responsible parent or custodial parent who objects to the notice and finding of financial responsibility may file an application for an adjudicative proceeding within twenty days of the date of service of the notice or thereafter as provided under this subsection.

(a) If the responsible parent or custodial parent files the application within twenty days, the office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application stays collection action pending the entry of a final administrative order;

(b) If both the responsible parent and the custodial parent fail to file an application within twenty days, the notice and finding shall become a final administrative order. The amounts for current and future support and the support debt stated in the notice are final and subject to collection, except as provided under (c) and (d) of this subsection;

(c) If the responsible parent or custodial parent files the application more than twenty days after, but within one year of the date of service, the office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action;

(d) If the responsible parent or custodial parent files the application more than one year after the date of service, the office of administrative hearings shall schedule an adjudicative proceeding at which the parent who requested the late hearing must show good cause for failure to file a timely application. The filing of the application does not stay future collection action and does not affect prior collection action:

(i) If the presiding officer finds that good cause exists, the presiding officer shall proceed to hear the parent's objection to the notice and determine the support obligation;

(ii) If the presiding officer finds that good cause does not exist, the presiding officer shall treat the application as a petition for prospective modification of the amount for current and future support established under the notice and finding. In the modification proceeding, the presiding officer shall set current and future support under chapter 26.19 RCW. The petitioning parent need show neither good cause nor a substantial change of circumstances to justify modification of current and future support;

(e) If the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard, the division of child support may file an application for adjudicative proceeding more than twenty days after the date of service of the notice. The office of administrative hearings shall schedule an adjudicative proceeding and provide notice of the hearing to the responsible parent and the custodial parent. The presiding officer shall determine the support obligation for the entire period covered by the notice, based upon credible evidence presented by the division of child support, the responsible parent, or the custodial parent, or may determine that the support obligation set forth in the notice is correct. The division of child support demonstrates good cause by showing that the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard. The filing of the application by the division of child support does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action.

(f) The department shall retain and/or shall not refund support money collected more than twenty days after the date of service of the notice. Money withheld as the result of collection action shall be delivered to the department. The department shall distribute such money, as provided in published rules.

(5) If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the alleged responsible parent and shall also determine the amount of periodic payments to be made in the future, which amount is not limited by the amount of any public assistance payment made to or for the benefit of the child. If deviating from the child support schedule in making these determinations, the presiding or reviewing officer shall apply the standards contained in the child support schedule and enter written findings of fact supporting the deviation.

(6) If either the responsible parent or the custodial parent fails to attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the presiding officer shall enter an order of default against each party who did not appear and may enter an administrative order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection action. The parties who appear may enter an agreed settlement or consent order, which may be different than the terms of the department's notice. Any party who appears may choose to proceed to the hearing, after the conclusion of which the presiding officer or reviewing officer may enter an order that is different than the terms stated in the notice, if the obligation is supported by credible evidence presented by any party at the hearing.

(7) The final administrative order establishing liability and/or future periodic support payments shall be superseded upon entry of a superior court order for support to the extent the superior court order is inconsistent with the administrative order.

(8) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by a presiding or reviewing officer.

(9) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under 45 C.F.R. Parts 302, 303, 304, 305, and 308. [2019 c 46 § 5052; 2018 c 150 § 107; 2009 c 476 § 7; 2007 c 143 § 8; 2002 c 199 § 5; 1997 c 58 § 940; 1996 c 21 § 1; 1991 c 367 § 46; 1990 1st ex.s. c 2 § 21; 1989 c 175 § 152; 1988 c 275 § 10; 1982 c 189 § 8; 1979 ex.s. c 171 § 12; 1973 1st ex.s. c 183 § 25.]

Effective date—2009 c 476: See note following RCW 26.09.105.

Additional notes found at www.leg.wa.gov

74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules. ***(Effective until January 1, 2021.)*** (1)(a) If an acknowledged parent has signed an acknowledgment of parentage that has been filed with the state registrar of vital statistics:

(i) The division of child support may serve a notice and finding of financial responsibility under RCW 74.20A.055 based on the acknowledgment. The division of child support shall attach a copy of the acknowledgment or certification of the birth record information advising of the existence of a filed acknowledgment of parentage to the notice;

(ii) The notice shall include a statement that the acknowledged parent or any other signatory may commence a proceeding in court to rescind or challenge the acknowledgment or denial of parentage under RCW 26.26A.235 and 26.26A.240;

(iii) A statement that either or both parents are responsible for providing health care coverage for the child if accessible coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related as provided under RCW 26.09.105; and

(iv) The party commencing the action to rescind or challenge the acknowledgment or denial must serve notice on the division of child support and the office of the prosecuting attorney in the county in which the proceeding is commenced. Commencement of a proceeding to rescind or challenge the acknowledgment or denial stays the establishment of the notice and finding of financial responsibility, if the notice has not yet become a final order.

(b) If neither the acknowledged parent nor the other party to the notice files an application for an adjudicative proceeding or the signatories to the acknowledgment or denial do not commence a proceeding to rescind or challenge the acknowledgment of parentage, the amount of support stated in the notice and finding of financial responsibility becomes final, subject only to a subsequent determination under RCW 26.26A.400 through 26.26A.515 that the parent-child relationship does not exist. The division of child support does not refund nor return any amounts collected under a notice that becomes final under this section or RCW 74.20A.055, even if a court later determines that the acknowledgment is void.

(c) An acknowledged parent or other party to the notice who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt and the amount of the current and future support obligation.

(i) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department.

(ii) If the application for an adjudicative proceeding is not filed within twenty days of the service of the notice, any amounts collected under the notice shall be neither refunded nor returned if the alleged genetic parent is later found not to be a responsible parent.

(d) If neither the acknowledged parent nor the custodial parent requests an adjudicative proceeding, or if no timely action is brought to rescind or challenge the acknowledgment or denial after service of the notice, the notice of financial responsibility becomes final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26A.400 through 26.26A.515.

(2) Acknowledgments of parentage are subject to requirements of chapters 26.26A, 26.26B, and *70.58 RCW.

(3) The department and the department of health may adopt rules to implement the requirements under this section.

(4) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under 45 C.F.R. Parts 302, 303, 304, 305, and 308. [2019 c 46 § 5053; 2018 c 150 § 108; 2009 c 476 § 8; 2007 c 143 § 9. Prior: 2002 c 302 § 707; 2002 c 199 § 6; 1997 c 58 § 941; prior: 1994 c 230 § 19; 1994 c 146 § 5; 1989 c 55 § 3.]

***Reviser's note:** Chapter 70.58 RCW was repealed in its entirety by 2019 c 148 § 40, effective January 1, 2021. For later enactment, see chapter 70.58A RCW.

Effective date—2009 c 476: See note following RCW 26.09.105.

Birth certificate—Establishing paternity: RCW 70.58.080.

Additional notes found at www.leg.wa.gov

74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules. ***(Effective January 1, 2021.)*** (1)(a) If an acknowledged parent has signed an acknowledgment of parentage that has been filed with the state registrar of vital statistics:

(i) The division of child support may serve a notice and finding of financial responsibility under RCW 74.20A.055 based on the acknowledgment. The division of child support shall attach a copy of the acknowledgment or certification of

the birth record information advising of the existence of a filed acknowledgment of parentage to the notice;

(ii) The notice shall include a statement that the acknowledged parent or any other signatory may commence a proceeding in court to rescind or challenge the acknowledgment or denial of parentage under RCW 26.26A.235 and 26.26A.240;

(iii) A statement that either or both parents are responsible for providing health care coverage for the child if accessible coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related as provided under RCW 26.09.105; and

(iv) The party commencing the action to rescind or challenge the acknowledgment or denial must serve notice on the division of child support and the office of the prosecuting attorney in the county in which the proceeding is commenced. Commencement of a proceeding to rescind or challenge the acknowledgment or denial stays the establishment of the notice and finding of financial responsibility, if the notice has not yet become a final order.

(b) If neither the acknowledged parent nor the other party to the notice files an application for an adjudicative proceeding or the signatories to the acknowledgment or denial do not commence a proceeding to rescind or challenge the acknowledgment of parentage, the amount of support stated in the notice and finding of financial responsibility becomes final, subject only to a subsequent determination under RCW 26.26A.400 through 26.26A.515 that the parent-child relationship does not exist. The division of child support does not refund nor return any amounts collected under a notice that becomes final under this section or RCW 74.20A.055, even if a court later determines that the acknowledgment is void.

(c) An acknowledged parent or other party to the notice who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt and the amount of the current and future support obligation.

(i) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department.

(ii) If the application for an adjudicative proceeding is not filed within twenty days of the service of the notice, any amounts collected under the notice shall be neither refunded nor returned if the alleged genetic parent is later found not to be a responsible parent.

(d) If neither the acknowledged parent nor the custodial parent requests an adjudicative proceeding, or if no timely action is brought to rescind or challenge the acknowledgment or denial after service of the notice, the notice of financial responsibility becomes final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26A.400 through 26.26A.515.

(2) Acknowledgments of parentage are subject to requirements of chapters 26.26A, 26.26B, and 70.58A RCW.

(3) The department and the department of health may adopt rules to implement the requirements under this section.

(4) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under 45 C.F.R. Parts 302, 303, 304, 305, and 308. [2019 c 148 § 38; 2019 c 46 § 5053; 2018 c 150 § 108; 2009 c 476 § 8; 2007 c 143 § 9. Prior: 2002 c 302 § 707; 2002 c 199 § 6; 1997 c 58 § 941; prior: 1994 c 230 § 19; 1994 c 146 § 5; 1989 c 55 § 3.]

Reviser's note: This section was amended by 2019 c 46 § 5053 and by 2019 c 148 § 38, 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—Rule-making authority—2019 c 148: See RCW 70.58A.901 and 70.58A.902.

Effective date—2009 c 476: See note following RCW 26.09.105.

Additional notes found at www.leg.wa.gov

74.20A.057 Jurisdiction over responsible parent. A support obligation arising under the statutes or common law of this state binds the responsible parent, present in this state, regardless of the presence or residence of the custodian or children. The obligor is presumed to have been present in the state of Washington during the period for which support is sought until otherwise shown. The department may establish an administrative order pursuant to RCW 74.20A.055 that is based upon any support obligation imposed or imposable under the statutes or common law of any state in which the obligor was present during the period for which support is sought. [1985 c 276 § 15.]

74.20A.059 Modification of administrative orders establishing child support—Petition—Grounds—Procedure. (1) The department, the physical custodian, or the responsible parent may petition for a prospective modification of a final administrative order if:

(a) The administrative order has not been superseded by a superior court order; and

(b) There has been a substantial change of circumstances, except as provided under RCW 74.20A.055(4)(d) or subsection (2) of this section.

(2) An order of child support may be modified at any time without a showing of substantially changed circumstances if incarceration of the parent who is obligated to pay support is the basis for the inconsistency between the existing child support order amount and the amount of support determined as a result of a review.

(3) An order of child support may be modified one year or more after it has been entered without showing a substantial change of circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child; or

(b) If a child is a full-time student and reasonably expected to complete secondary school or the equivalent level of vocational or technical training before the child becomes nineteen years of age upon a finding that there is a need to extend support beyond the eighteenth birthday.

(4) An order may be modified without showing a substantial change of circumstances if the requested modification is to:

(a) Require medical support under RCW 26.09.105 for a child covered by the order; or

(b) Modify an existing order for health care coverage.

(5) Support orders may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances.

(6)(a) All administrative orders entered on, before, or after September 1, 1991, may be modified based upon changes in the child support schedule established in chapter 26.19 RCW without a substantial change of circumstances. The petition may be filed based on changes in the child support schedule after twelve months has expired from the entry of the administrative order or the most recent modification order setting child support, whichever is later. However, if a party is granted relief under this provision, twenty-four months must pass before another petition for modification may be filed pursuant to subsection (5) of this section.

(b) If, pursuant to subsection (5) of this section or (a) of this subsection, the order modifies a child support obligation by more than thirty percent and the change would cause significant hardship, the change may be implemented in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a petition for modification under subsection (5) of this section may be filed.

(7) An increase in the wage or salary of the parent or custodian who is receiving the support transfer payments is not a substantial change in circumstances for purposes of modification under subsection (1)(b) of this section. An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(8) The department shall file the petition and a supporting affidavit with the secretary or the secretary's designee when the department petitions for modification.

(9) The responsible parent or the physical custodian shall follow the procedures in this chapter for filing an application for an adjudicative proceeding to petition for modification.

(10) Upon the filing of a proper petition or application, the secretary or the secretary's designee shall issue an order directing each party to appear and show cause why the order should not be modified.

(11) If the presiding or reviewing officer finds a modification is appropriate, the officer shall modify the order and set current and future support under chapter 26.19 RCW. [2019 c 275 § 3; 2018 c 150 § 109; 2009 c 476 § 9; 1991 c 367 § 47.]

Effective date—2009 c 476: See note following RCW 26.09.105.

Additional notes found at www.leg.wa.gov

74.20A.060 Assertion of lien—Effect. (1) The secretary may assert a lien upon the real or personal property of a responsible parent:

(a) When a support payment is past due, if the parent's support order contains notice that liens may be enforced against real and personal property, or notice that action may be taken under this chapter;

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055;

(d) Twenty-one days after service of a notice and finding of parental responsibility;

(e) Twenty-one days after service of a notice of support owed under RCW 26.23.110; or

(f) When appropriate under RCW 74.20A.270.

(2) The division of child support may use uniform interstate lien forms adopted by the United States department of health and human services to assert liens on a responsible parent's real and personal property located in another state.

(3) The claim of the department for a support debt, not paid when due, shall be a lien against all property of the debtor with priority of a secured creditor. This lien shall be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. The lien shall attach to all real and personal property of the debtor on the date of filing of such statement with the county auditor of the county in which such property is located.

(4) Whenever a support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision or department of the state having notice of said lien any property which may be subject to the support lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained in RCW 74.20A.090 and 74.20A.130, unless:

(a) A written release or waiver signed by the secretary has been delivered to said person, firm, corporation, association, political subdivision or department of the state; or

(b) A determination has been made in an adjudicative proceeding pursuant to RCW 74.20A.055 or by a superior court ordering release of said support lien on the basis that no debt exists or that the debt has been satisfied. [1997 c 58 § 906. Prior: 1989 c 360 § 9; 1989 c 175 § 153; 1979 ex.s. c 171 § 5; 1973 1st ex.s. c 183 § 7; 1971 ex.s. c 164 § 6.]

Additional notes found at www.leg.wa.gov

74.20A.070 Service of lien. (1) The secretary may at any time after filing of a support lien serve a copy of the lien upon any person, firm, corporation, association, political subdivision, or department of the state in possession of earnings, or deposits or balances held in any bank account of any nature which are due, owing, or belonging to said debtor.

(2) The support lien shall be served upon the person, firm, corporation, association, political subdivision, or department of the state:

(a) In the manner prescribed for the service of summons in a civil action;

(b) By certified mail, return receipt requested; or

(c) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, or department of the state to accept service by electronic means.

(3) No lien filed under RCW 74.20A.060 shall have any effect against earnings or bank deposits or balances unless it states the amount of the support debt accrued and unless service upon the person, firm, corporation, association, political subdivision, or department of the state in possession of earn-

ings or bank accounts, deposits or balances is accomplished pursuant to this section. [1997 c 130 § 6; 1973 1st ex.s. c 183 § 8; 1971 ex.s. c 164 § 7.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

74.20A.080 Order to withhold and deliver—Issuance and service—Contents—Effect—Duties of person served—Processing fee. (1) The secretary may issue to any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States, an order to withhold and deliver property of any kind, including but not restricted to earnings which are or might become due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States property which is or might become due, owing, or belonging to said debtor. Such order to withhold and deliver may be issued:

(a) At any time, if a responsible parent's support order:

(i) Contains notice that withholding action may be taken against earnings, wages, or assets without further notice to the parent; or

(ii) Includes a statement that other income-withholding action under this chapter may be taken without further notice to the responsible parent;

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of parental responsibility under RCW 74.20A.056;

(d) Twenty-one days after service of a notice of support owed under RCW 26.23.110;

(e) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055; or

(f) When appropriate under RCW 74.20A.270.

(2) The order to withhold and deliver shall:

(a) State the amount to be withheld on a periodic basis if the order to withhold and deliver is being served to secure payment of monthly current support;

(b) State the amount of the support debt accrued;

(c) State in summary the terms of RCW 74.20A.090 and 74.20A.100;

(d) Be served:

(i) In the manner prescribed for the service of a summons in a civil action;

(ii) By certified mail, return receipt requested;

(iii) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means;

(iv) By regular mail to a responsible parent's employer unless the division of child support reasonably believes that service of process in the manner prescribed in (d)(i) or (ii) of this subsection is required for initiating an action to ensure employer compliance with the withholding requirement; or

(v) By regular mail to an address if designated by the financial institution as a central levy or garnishment address, and if the notice is clearly identified as a levy or garnishment order. Before the division of child support may initiate an action for noncompliance with a withholding action against a financial institution, the division of child support must serve the order to withhold and deliver on the financial institution in the manner described in (d)(i) or (ii) of this subsection.

(3) The division of child support may use uniform interstate withholding forms adopted by the United States department of health and human services to take withholding actions under this section when the responsible parent is owed money or property that is located in this state or in another state.

(4) Any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States upon whom service has been made is hereby required to:

(a) Answer said order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein; and

(b) Provide further and additional answers when requested by the secretary.

(5) The returned answer or a payment remitted to the division of child support by the employer constitutes proof of service of the order to withhold and deliver in the case where the order was served by regular mail.

(6) Any such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States in possession of any property which may be subject to the claim of the department shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver; and

(ii) Within seven working days deliver the property to the secretary;

(iii) Continue to withhold earnings payable to the debtor at each succeeding disbursement interval as provided for in RCW 74.20A.090, and deliver amounts withheld from earnings to the secretary within seven working days of the date earnings are payable to the debtor;

(iv) Deliver amounts withheld from periodic payments to the secretary within seven working days of the date the payments are payable to the debtor;

(v) Inform the secretary of the date the amounts were withheld as requested under this section; or

(b) Furnish to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability.

(7) An order to withhold and deliver served under this section shall not expire until:

(a) Released in writing by the division of child support;

(b) Terminated by court order;

(c) A person or entity, other than an employer as defined in Title 50 RCW, who has received the order to withhold and deliver does not possess property of or owe money to the debtor; or

(d) An employer who has received the order to withhold and deliver no longer employs, contracts, or owes money to the debtor under a contract of employment, express or implied.

(8) Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision, or department of the state, or agency, subdivision, or instrumen-

tality of the United States subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary.

(9) Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(10) A person, firm, corporation, or association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the order to withhold and deliver under this chapter is not civilly liable to the debtor for complying with the order to withhold and deliver under this chapter.

(11) The secretary may hold the money or property delivered under this section in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability.

(12) Exemptions contained in RCW 74.20A.090 apply to orders to withhold and deliver issued under this section.

(13) The secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address, or, in the alternative, a copy of the order to withhold and deliver shall be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with a concise explanation of the right to petition for judicial review. This requirement is not jurisdictional, but, if the copy is not mailed or served as in this section provided, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the secretary's failure to serve on or mail to the debtor the copy.

(14) An order to withhold and deliver issued in accordance with this section has priority over any other wage assignment, garnishment, attachment, or other legal process.

(15) The division of child support shall notify any person, firm, corporation, association, or political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States required to withhold and deliver the earnings of a debtor under this action that they may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would otherwise be exempt under RCW 74.20A.090. The processing fee shall not exceed ten dollars for the first disbursement to the department and one dollar for each subsequent disbursement under the order to withhold and deliver. [2002 c 199 § 7; 2000 c 86 § 8; 1998 c 160 § 1. Prior: 1997 c 130 § 7; 1997 c 58 § 907; 1994 c 230 § 20; prior: 1989 c 360 § 10; 1989 c 175 § 154; 1985 c 276 § 6; 1979 ex.s. c 171 § 6; 1973 1st ex.s. c 183 § 9; 1971 ex.s. c 164 § 8.]

Additional notes found at www.leg.wa.gov

74.20A.090 Certain amount of earnings exempt from lien or order—"Earnings" and "disposable earnings" defined. Whenever a support lien or order to withhold and deliver is served upon any person, firm, corporation, association, political subdivision, or department of the state asserting a support debt against earnings and there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state, any such earnings, RCW 6.27.150 shall not apply, but fifty percent of the disposable earnings shall be exempt and may be disbursed to the debtor whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there be due the debtor earnings for one week or for a longer period. The lien or order to withhold and deliver shall continue to operate and require said person, firm, corporation, association, political subdivision, or department of the state to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until the entire amount of the support debt stated in the lien or order to withhold and deliver has been withheld. As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and, notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy support obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050 or Title 74 RCW. Earnings shall specifically include all gain derived from capital, from labor, or from both combined, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. [1982 1st ex.s. c 18 § 12. Prior: 1982 c 201 § 21; 1979 ex.s. c 171 § 10; 1973 1st ex.s. c 183 § 10; 1971 ex.s. c 164 § 9.]

Additional notes found at www.leg.wa.gov

74.20A.095 Support enforcement services—Action against earnings within state—Notice. When providing support enforcement services, the office of support enforcement may take action, under this chapter and chapter 26.23 RCW, against a responsible parent's earnings or assets, located in, or subject to the jurisdiction of, the state of Washington regardless of the presence or residence of the responsible parent. If the responsible parent resides in another state or country, the office of support enforcement shall, unless otherwise authorized by state or federal law, serve a notice under RCW 74.20A.040 more than sixty days before taking collection action. [2000 c 86 § 9; 1991 c 367 § 48.]

Additional notes found at www.leg.wa.gov

74.20A.100 Civil liability upon failure to comply with order or lien—Collection. (1) Any person, firm, corporation, association, political subdivision, or department of the state shall be liable to the department, or to the agency or firm providing child support enforcement for another state, under Title IV-D of the federal social security act and issuing a notice, garnishment, or wage assignment attaching wages or earnings in satisfaction of a support obligation, in the amount that should have been withheld, together with costs, interest, and reasonable attorney fees if that person or entity:

(a) Fails to answer an order to withhold and deliver, or substantially similar action issued by the agency or firm providing child support enforcement for another state, under Title IV-D of the federal social security act, within the time prescribed herein;

(b) Fails or refuses to deliver property pursuant to said order;

(c) After actual notice of filing of a support lien, pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien to or for the benefit of the debtor or any other person;

(d) Fails or refuses to surrender property distrained under RCW 74.20A.130 upon demand; or

(e) Fails or refuses to honor an assignment of earnings presented by the secretary.

(2) The secretary is authorized to issue a notice of noncompliance under RCW 74.20A.350 or to proceed in superior court to obtain a judgment for noncompliance under this section. [1997 c 296 § 15; 1997 c 58 § 895; 1989 c 360 § 5; 1985 c 276 § 7; 1973 1st ex.s. c 183 § 11; 1971 ex.s. c 164 § 10.]

Reviser's note: This section was amended by 1997 c 58 § 895 and by 1997 c 296 § 15, 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

74.20A.110 Release of excess to debtor. Whenever any person, firm, corporation, association, political subdivision or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department, such person, firm, corporation, association, political subdivision or department of the state may, without liability under this chapter, release said excess to the debtor. [1979 ex.s. c 171 § 7; 1971 ex.s. c 164 § 11.]

Additional notes found at www.leg.wa.gov

74.20A.120 Banks, savings and loan associations, credit unions—Service on main office or branch, effect—Collection actions against community bank account, right to adjudicative proceeding. A lien, order to withhold and deliver, or any other notice or document authorized by this chapter or chapter 26.23 RCW may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of such financial institution. Service on the main office shall be effective to attach the deposits of a responsible parent in the financial institution and compensation payable for personal services due the responsible parent from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the responsible parent, excluding compensation payable for personal services, in the possession or control of the particular branch served.

If the department initiates collection action under this chapter against a community bank account, the debtor or the debtor's spouse, upon service on the department of a timely application, has a right to an adjudicative proceeding governed by chapter 34.05 RCW, the Administrative Procedure Act, to establish that the funds in the account, or a portion of those funds, were the earnings of the nonobligated spouse, and are exempt from the satisfaction of the child support obligation of the debtor pursuant to RCW 26.16.200. [1989 c 360 § 30; 1989 c 175 § 155; 1983 1st ex.s. c 41 § 3; 1971 ex.s. c 164 § 12.]

Reviser's note: This section was amended by 1989 c 175 § 155 and by 1989 c 360 § 30, 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

74.20A.130 Distraint, seizure and sale of property subject to liens under RCW 74.20A.060—Procedure. Whenever a support lien has been filed pursuant to RCW 74.20A.060, the secretary may collect the support debt stated in said lien by the distraint, seizure, and sale of the property subject to said lien. Not less than ten days prior to the date of sale, the secretary shall cause a copy of the notice of sale to be transmitted by regular mail and by any form of mailing requiring a return receipt to the debtor and any person known to have or claim an interest in the property. Said notice shall contain a general description of the property to be sold and the time, date, and place of the sale. The notice of sale shall be posted in at least two public places in the county wherein the distraint has been made. The time of sale shall not be less than ten nor more than twenty days from the date of posting of such notices. Said sale shall be conducted by the secretary, who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the secretary may declare such property to be purchased by the department for such price, or may conduct another sale of such property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the department as herein prescribed may be sold by the secretary at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the department of social and health services. In all cases of sale, as aforesaid, the secretary shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the secretary to make such sale and conclusive evidence of the regularity of his or her proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the debtor in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the secretary to reimbursement of the costs of distraint and sale, and thereafter in satisfaction of the delinquent account. Any excess which shall thereafter remain in the hands of the secretary shall be refunded to the debtor. Sums so refundable to a debtor may be subject to seizure or distraint by any taxing authority of the state or its political subdivisions or by the secretary for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in this chapter, there shall be exempt from distraint, seizure, and sale under this chapter such property as is exempt therefrom under the laws of this state. [2013 c 23 § 216; 1987 c 435 § 32; 1973 1st ex.s. c 183 § 12; 1971 ex.s. c 164 § 13.]

Additional notes found at www.leg.wa.gov

74.20A.140 Action for foreclosure of support lien—Satisfaction. Whenever a support lien has been filed, an action in foreclosure of lien upon real or personal property may be brought in the superior court of the county where real or personal property is or was located and the lien was filed and judgment shall be rendered in favor of the department for the amount due, with costs, and the court shall allow, as part of the costs, the moneys paid for making and filing the claim of lien, and a reasonable attorney's fee, and the court shall order any property upon which any lien provided for by this chapter is established, to be sold by the sheriff of the proper county to satisfy the lien and costs. The payment of the lien debt, costs and reasonable attorney fees, at any time before sale, shall satisfy the judgment of foreclosure. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the department shall have judgment over for any deficiency remaining unsatisfied and further levy and sales upon other property of the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of notice shall only be necessary for two weeks in a newspaper published in the county where said property is located, and if there be no newspaper therein, then in the most convenient newspaper having a circulation in such county. Remedies provided for herein are alternatives to remedies provided for in other sections of this chapter. [1973 1st ex.s. c 183 § 13; 1971 ex.s. c 164 § 14.]

74.20A.150 Satisfaction of lien after foreclosure proceedings instituted—Redemption. Any person owning real property, or any interest in real property, against which a support lien has been filed and foreclosure instituted, shall have the right to pay the amount due, together with expenses of the proceedings and reasonable attorneys' fees to the secretary and upon such payment the secretary shall restore said property to him or her and all further proceedings in the said foreclosure action shall cease. Said person shall also have the right within two hundred forty days after sale of property foreclosed under RCW 74.20A.140 to redeem said property by making payment to the purchaser in the amount paid by the purchaser plus interest thereon at the rate of six percent per annum. [2013 c 23 § 217; 1973 1st ex.s. c 183 § 14; 1971 ex.s. c 164 § 15.]

74.20A.160 Secretary may set debt payment schedule, release funds in certain hardship cases. With respect to any arrearages on a support debt assessed under this chapter, the secretary may at any time consistent with the income, earning capacity and resources of the debtor, set or reset a level and schedule of payments to be paid upon a support debt. The secretary may, upon petition of the debtor providing sufficient evidence of hardship, after consideration of the child support schedule adopted under *RCW 26.19.040, release or refund moneys taken pursuant to RCW 74.20A.080 to provide for the reasonable necessities of the responsible parent or parents and minor children in the home of the responsible parent. Nothing in this section shall be construed to require the secretary to take any action which would require collection of less than the obligation for current support required under a superior court order or an administrative order or to take any action which would result in a bar of collection of arrearages from the debtor by reason of the statute of limitations. [1988 c 275 § 11; 1985 c 276 § 8; 1979 ex.s. c 171 § 8; 1971 ex.s. c 164 § 16.]

***Reviser's note:** RCW 26.19.040 was repealed by 1991 sp.s. c 28 § 8, effective September 1, 1991.

Additional notes found at www.leg.wa.gov

74.20A.170 Secretary may release lien or order or return seized property—Effect. The secretary may at any time release a support lien, or order to withhold and deliver, on all or part of the property of the debtor, or return seized property without liability, if assurance of payment is deemed adequate by the secretary, or if said action will facilitate the collection of the debt, but said release or return shall not operate to prevent future action to collect from the same or other property. [1973 1st ex.s. c 183 § 15; 1971 ex.s. c 164 § 17.]

74.20A.180 Secretary may make demand, file and serve liens, when payments appear in jeopardy. If the secretary finds that the collection of any support debt, accrued under a support order, based upon subrogation or an authorization to enforce and collect under RCW 74.20A.030, or assignment of, or a request for support enforcement services to enforce and collect the amount of support ordered by any support order is in jeopardy, the secretary may make a written demand under RCW 74.20A.040 for immediate payment of the support debt and, upon failure or refusal immediately to pay said support debt, may file and serve liens pursuant to RCW 74.20A.060 and 74.20A.070, without regard to the twenty day period provided for in RCW 74.20A.040: PROVIDED, That no further action under RCW 74.20A.080, 74.20A.130, and 74.20A.140 may be taken until the notice requirements of RCW 74.20A.040 are met. [2000 c 86 § 10; 1985 c 276 § 9; 1973 1st ex.s. c 183 § 16; 1971 ex.s. c 164 § 18.]

74.20A.188 Request for assistance on automated enforcement of interstate case—Certification required. (1) Before the state may assist another state or jurisdiction with a high-volume automated administrative enforcement of an interstate case, the requesting state must certify that:

(a) The requesting state has met all due process requirements for the establishment of the support order;

(b) The requesting state has met all due process requirements for the enforcement of the support order, including that the obligor has been notified that another state may take action against the obligor's wages, earnings, assets, or benefits, and may enforce against the obligor's real and personal property under the child support statutes of this state or any other state without further notice; and

(c) The amount of arrears transmitted by the requesting state is due under the support order.

(2) Receipt of a request for assistance on automated enforcement of an interstate case by the state constitutes certification under this section. [2000 c 86 § 11.]

74.20A.200 Judicial relief after administrative remedies exhausted. Any person against whose property a support lien has been filed or an order to withhold and deliver has been served pursuant to this chapter may apply for relief to the superior court of the county wherein the property is

located. It is the intent of this chapter that jurisdictional and constitutional issues, if any, shall be subject to review, but that administrative remedies be exhausted prior to judicial review. [1985 c 276 § 10; 1979 ex.s. c 171 § 9; 1973 1st ex.s. c 183 § 18; 1971 ex.s. c 164 § 20.]

Additional notes found at www.leg.wa.gov

74.20A.220 Charging off child support debts as uncollectible—Compromise—Waiver of any bar to collection. Any support debt due the department from a responsible parent may be written off and cease to be accounted as an asset if the secretary finds there are no cost-effective means of collecting the debt.

The department may accept offers of compromise of disputed claims or may grant partial or total charge-off of support arrears owed to the department up to the total amount of public assistance paid to or for the benefit of the persons for whom the support obligation was incurred. The department shall adopt rules as to the considerations to be made in the granting or denial of partial or total charge-off and offers of compromise of disputed claims of debt for support arrears. The rights of the payee under an order for support shall not be prejudiced if the department accepts an offer of compromise, or grants a partial or total charge-off under this section.

The responsible parent owing a support debt may execute a written extension or waiver of any statute which may bar or impair the collection of the debt and the extension or waiver shall be effective according to its terms. [1989 c 360 § 4; 1989 c 78 § 2; 1979 ex.s. c 171 § 16; 1973 1st ex.s. c 183 § 20; 1971 ex.s. c 164 § 22.]

Reviser's note: This section was amended by 1989 c 78 § 2 and by 1989 c 360 § 4, 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

74.20A.230 Employee debtor rights protected—Remedies. No employer shall discharge or discipline an employee or refuse to hire a person for reason that an assignment of earnings has been presented in settlement of a support debt or that a support lien or order to withhold and deliver has been served against said employee's earnings. If an employer discharges or disciplines an employee or refuses to hire a person in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and any other damages suffered as a result of the violation and for costs and reasonable attorney fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual. [1985 c 276 § 11; 1973 1st ex.s. c 183 § 21; 1971 ex.s. c 164 § 23.]

74.20A.240 Assignment of earnings to be honored—Effect—Processing fee. Any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States employing a person owing a support debt or obligation, shall honor, according to its terms, a duly executed assignment of earnings presented by the secretary as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself shall be applicable whether said earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the secretary. Payment of moneys pursuant to an assignment of earnings presented by the secretary shall serve as full acquittance under any contract of employment. A person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the assignment of earnings under this chapter is not civilly liable to the debtor for complying with the assignment of earnings under this chapter. The secretary shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received.

An assignment of earnings presented by the secretary in accordance with this section has priority over any other wage assignment, garnishment, attachment, or other legal process except for another wage assignment, garnishment, attachment, or other legal process for support moneys.

The employer may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would be exempt under RCW 74.20A.090. The processing fee shall not exceed fifteen dollars from the first disbursement to the department and one dollar for each subsequent disbursement under the assignment of earnings. [1997 c 296 § 16; 1994 c 230 § 21; 1985 c 276 § 12; 1973 1st ex.s. c 183 § 22; 1971 ex.s. c 164 § 24.]

74.20A.250 Secretary empowered to act as attorney, endorse drafts. Whenever the secretary has been authorized under RCW 74.20.040 to take action to establish, enforce, and collect support moneys, the custodial parent and the child or children are deemed, without the necessity of signing any document, to have appointed the secretary as his or her true and lawful attorney-in-fact to act in his or her name, place, and stead to perform the specific act of endorsing any and all drafts, checks, money orders or other negotiable instruments representing support payments which are received on behalf of said child or children to effect proper and lawful distribution of the support moneys in accordance with 42 U.S.C. Sec. 657. [1985 c 276 § 13; 1979 ex.s. c 171 § 20; 1973 1st ex.s. c 183 § 23; 1971 ex.s. c 164 § 25.]

Additional notes found at www.leg.wa.gov

74.20A.260 Industrial insurance disability payments subject to collection by office of support enforcement. Disability payments made pursuant to Title 51 RCW shall be classified as earnings and shall be subject to collection action by the office for support enforcement under this chapter and all other applicable state statutes. [1987 c 435 § 34; 1973 1st ex.s. c 183 § 24.]

Additional notes found at www.leg.wa.gov

74.20A.270 Department claim for support moneys—Notice—Answer—Adjudicative proceeding—Judicial review—Moneys not subject to claim. (1) The secretary may issue a notice of retained support or notice to recover a support payment to any person:

(a) Who is in possession of support moneys, or who has had support moneys in his or her possession at some time in the past, which support moneys were or are claimed by the department as the property of the department by assignment, subrogation, or by operation of law or legal process under chapter 74.20A RCW;

(b) Who has received a support payment erroneously directed to the wrong payee, or issued by the department in error; or

(c) Who is in possession of a support payment obtained through the internal revenue service tax refund offset process, which payment was later reclaimed from the department by the internal revenue service as a result of an amended tax return filed by the obligor or the obligor's spouse.

(2) The notice shall state the legal basis for the claim and shall provide sufficient detail to enable the person to identify the support moneys in issue.

(3) The department shall serve the notice by certified mail, return receipt requested, or in the manner of a summons in a civil action.

(4) The amounts claimed in the notice shall become assessed, determined, and subject to collection twenty days from the date of service of the notice unless within those twenty days the person in possession of the support moneys:

(a) Acknowledges the department's right to the moneys and executes an agreed settlement providing for repayment of the moneys; or

(b) Requests an adjudicative proceeding to determine the rights to ownership of the support moneys in issue. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department. The burden of proof to establish ownership of the support moneys claimed is on the department.

(5) After the twenty-day period, a person served with a notice under this section may, at any time within one year from the date of service of the notice of support debt, petition the secretary or the secretary's designee for an adjudicative proceeding upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60. A copy of the petition shall also be served on the department. The filing of the petition shall not stay any collection action being taken, but the debtor may petition the secretary or the secretary's designee for an order staying collection action pending the final administrative order. Any such moneys held and/or taken by collection action after the date of any such stay shall be held by the department pending the final order, to be disbursed in accordance with the final order.

(6) If the debtor fails to attend or participate in the hearing or other stage of an adjudicative proceeding, the presiding officer shall, upon showing of valid service, enter an order declaring the amount of support moneys, as claimed in the notice, to be assessed and determined and subject to collection action.

(7) The department may take action to collect an obligation established under this section using any remedy available under this chapter or chapter 26.09, 26.18, 26.23, or 74.20 RCW for the collection of child support.

(8) If, at any time, the superior court enters judgment for an amount of debt at variance with the amount determined by the final order in an adjudicative proceeding, the judgment shall supersede the final administrative order. The department may take action pursuant to chapter 74.20 or 74.20A RCW to obtain such a judgment or to collect moneys determined by such a judgment to be due and owing.

(9) If a person owing a debt established under this section is receiving public assistance, the department may collect the debt by offsetting up to ten percent of the grant payment received by the person. No collection action may be taken against the earnings of a person receiving cash public assistance to collect a debt assessed under this section.

(10) Payments not credited against the department's debt pursuant to RCW 74.20.101 may not be assessed or collected under this section. [1997 c 58 § 896. Prior: 1989 c 360 § 35; 1989 c 175 § 156; 1985 c 276 § 14; 1984 c 260 § 41; 1979 ex.s. c 171 § 18.]

Additional notes found at www.leg.wa.gov

74.20A.275 Support payments in possession of third parties—Collection. (1) If a person or entity not entitled to child support payments wrongfully or negligently retains child support payments owed to another or to the Washington state support registry, those payments retain their character as child support payments and may be collected by the division of child support using any remedy available to the division of child support under Washington law for the collection of child support.

(2) Child support moneys subject to collection under this section may be collected for the duration of the statute of limitations as it applies to the support order governing the support obligations, and any legislative or judicial extensions thereto.

(3) This section applies to the following:

(a) Cases in which an employer or other entity obligated to withhold child support payments from the parent's pay, bank, or escrow account, or from any other asset or distribution of money to the parent, has withheld those payments and failed to remit them to the payee;

(b) Cases in which child support moneys have been paid to the wrong person or entity in error;

(c) Cases in which child support recipients have retained child support payments in violation of a child support assignment executed or arising by operation of law in exchange for the receipt of public assistance; and

(d) Any other case in which child support payments are retained by a party not entitled to them.

(4) This section does not apply to fines levied under *RCW 74.20A.350(3)(b). [1997 c 58 § 892.]

***Reviser's note:** RCW 74.20A.350 was amended by 2018 c 150 § 202, changing subsection (3)(b) to subsection (4)(b), effective January 1, 2019.

Additional notes found at www.leg.wa.gov

74.20A.280 Department to respect privacy of recipients. While discharging its responsibilities to enforce the support obligations of responsible parents, the department shall respect the right of privacy of recipients of public assistance and of other persons. Any inquiry about sexual activity shall be limited to that necessary to identify and locate possible fathers and to gather facts needed in the adjudication of parentage. [1987 c 441 § 2; 1979 ex.s. c 171 § 23.]

Additional notes found at www.leg.wa.gov

74.20A.290 Applicant for adjudicative proceeding must advise department of current address. Whenever any person files an application for an adjudicative proceeding under RCW 74.20A.055 or 74.20A.270, after the department has notified the person of the requirements of this section, it shall be the responsibility of the person to notify the department of the person's mailing address at the time the application for an adjudicative proceeding is made and also to notify the department of any subsequent change of mailing address during the pendency of the administrative proceeding and any judicial review. Whenever the person has a duty under this section to advise the department of the person's mailing address, mailing by the department by certified mail to the person's last known address constitutes service as required by chapters 74.20A and 34.05 RCW. [1989 c 175 § 157; 1979 ex.s. c 171 § 21.]

Additional notes found at www.leg.wa.gov

74.20A.300 Medical support—Health care coverage required. (1) Whenever a support order is entered or modified under this chapter, the department shall require either or both parents to provide medical support for any dependent child, in the nature of health care coverage or a monthly payment toward the premium, as provided under RCW 26.09.105.

(2) A parent ordered to provide health care coverage shall provide proof of such coverage or proof that such coverage is unavailable to the department within twenty days of the entry of the order.

(3) A parent required to provide health care coverage must notify the department and the other parent when coverage terminates.

(4) Every order requiring a parent to provide health care coverage shall be entered in compliance with *RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW. [2018 c 150 § 110; 2009 c 476 § 6; 1994 c 230 § 22; 1989 c 416 § 6.]

***Reviser's note:** The reference to RCW 26.23.050 appears to refer to the amendments made by 1989 c 416 § 8 that were subsequently vetoed by the governor.

Effective date—2009 c 476: See note following RCW 26.09.105.

74.20A.310 Federal and state cooperation—Rules—Construction. In furtherance of the policy of the state to cooperate with the federal government in the administration of the child support enforcement program, the department may adopt such rules and regulations as may become necessary to entitle the state to participate in federal funds, unless such rules would be expressly prohibited by law. Any section or provision of law dealing with the child support program which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling the state to receive federal funds. If any law dealing with the child support enforcement program is ruled to be in conflict with federal requirements which are a prescribed condition of the allocation of federal funds, such conflicting law is declared to be inoperative solely to the extent of the conflict. [1989 c 416 § 7.]

74.20A.320 License suspension—Notice of noncompliance with a child support order—License renewal and reinstatement. (1) The department may serve upon a responsible parent a notice informing the responsible parent of the department's intent to submit the parent's name to the department of licensing and any appropriate licensing entity as a licensee who is not in compliance with a child support order.

(a) If the support order establishing or modifying the child support obligation includes a statement required under RCW 26.23.050 that the responsible parent's privileges to obtain and maintain a license may not be renewed or may be suspended if the parent is not in compliance with a support order, the department may send the notice required by this section to the responsible parent by regular mail, addressed to the responsible parent's last known mailing address on file with the department or by personal service. Notice by regular mail is deemed served three days from the date the notice was deposited with the United States postal service.

(b) If the support order does not include a statement as required under RCW 26.23.050 that the responsible parent's privileges to obtain and maintain a license may not be renewed or may be suspended if the parent is not in compliance with a support order, service of the notice required by this section to the responsible parent must be by certified mail, return receipt requested. If service by certified mail is not successful, service shall be by personal service.

(2) The notice of noncompliance must include the following information:

(a) The address and telephone number of the department's division of child support office that issued the notice;

(b) That in order to prevent the department from certifying the parent's name to the department of licensing or any other licensing entity, the parent has twenty days from receipt of the notice to contact the department and:

(i) Pay the overdue support amount in full;

(ii) Request an adjudicative proceeding as provided in RCW 74.20A.322;

(iii) Agree to a payment schedule with the department as provided in RCW 74.20A.326; or

(iv) File an action to modify the child support order with the appropriate court or administrative forum, in which case the department will stay the certification process up to six months;

(c) That failure to contact the department within twenty days of receipt of the notice will result in certification of the responsible parent's name to the department of licensing and any other appropriate licensing entity for noncompliance with a child support order. Upon receipt of the notice:

(i) The licensing entity will suspend or not renew the parent's license and the department of licensing will suspend or not renew any driver's license that the parent holds until the parent provides the department of licensing and the licensing entity with a release from the department stating that the responsible parent is in compliance with the child support order;

(ii) The department of fish and wildlife will suspend a fishing license, hunting license, occupational licenses, such as a commercial fishing license, or any other license issued under chapter 77.32 RCW that the responsible parent may possess, and suspension of a license by the department of fish

and wildlife may also affect the parent's ability to obtain permits, such as special hunting permits, issued by the department. Notice from the department of licensing that a responsible parent's driver's license has been suspended shall serve as notice of the suspension of a license issued under chapter 77.32 RCW;

(d) That suspension of a license will affect insurability if the responsible parent's insurance policy excludes coverage for acts occurring after the suspension of a license;

(e) If the responsible parent subsequently comes into compliance with the child support order, the department will promptly provide the parent and the appropriate licensing entities with a release stating that the parent is in compliance with the order.

(3) When a responsible parent who is served notice under subsection (1) of this section subsequently complies with the child support order, a copy of a release stating that the responsible parent is in compliance with the order shall be transmitted by the department to the appropriate licensing entities.

(4) The department of licensing and a licensing entity may renew, reinstate, or otherwise extend a license in accordance with the licensing entity's or the department of licensing's rules after the licensing entity or the department of licensing receives a copy of the release specified in subsection (3) of this section. The department of licensing and a licensing entity may waive any applicable requirement for reissuance, renewal, or other extension if it determines that the imposition of that requirement places an undue burden on the person and that waiver of the requirement is consistent with the public interest. [2017 c 269 § 6; 2009 c 408 § 1; 1997 c 58 § 802.]

***Reviser's note:** Subsection (1) of this section was vetoed by the governor. The vetoed language is as follows:

"(1) Sections 1, 2, 101 through 110, 201 through 207, 301 through 329, 401 through 404, 501 through 506, 601, 705, 706, 888, 891 through 943, 945 through 948, and 1002 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 immediately."

Intent—1997 c 58: "It is the intent of the legislature to provide a strong incentive for persons owing child support to make timely payments, and to cooperate with the department of social and health services to establish an appropriate schedule for the payment of any arrears. To further ensure that child support obligations are met, sections 801 through 890 of this act establish a program by which certain licenses may be suspended or not renewed if a person is one hundred eighty days or more in arrears on child support payments.

In the implementation and management of this program, it is the legislature's intent that the objective of the department of social and health services be to obtain payment in full of arrears, or where that is not possible, to enter into agreements with delinquent obligors to make timely support payments and make reasonable payments towards the arrears. The legislature intends that if the obligor refuses to cooperate in establishing a fair and reasonable payment schedule for arrears or refuses to make timely support payments, the department shall proceed with certification to a licensing entity or the department of licensing that the person is not in compliance with a child support order." [1997 c 58 § 801.]

Additional notes found at www.leg.wa.gov

74.20A.322 License suspension—Adjudicative proceeding. (1) A responsible parent may request an adjudicative proceeding upon service of the notice described in RCW 74.20A.320. The request for an adjudicative proceeding must be received by the department within twenty days of service. The request must be in writing and indicate the current mailing address and daytime phone number, if available, of the responsible parent.

(2) If a responsible parent timely requests an adjudicative proceeding, the department may not certify the name of the parent to the department of licensing or a licensing entity for noncompliance with a child support order unless the adjudicative proceeding results in a finding that the responsible parent is not in compliance with the order and has not made a good faith effort to comply.

(3) The issues that may be considered at the adjudicative proceeding are limited to whether:

(a) The person named as the responsible parent is the responsible parent;

(b) The responsible parent is required to pay child support under a child support order;

(c) The responsible parent is in compliance with the order; and

(d) The responsible parent has made a good faith effort to comply with the order.

(4) If the administrative law judge finds that the parent is not in compliance with the support order, but has made a good faith effort to comply, the administrative law judge shall formulate a payment schedule as provided in RCW 74.20A.326.

(5) The decision resulting from the adjudicative proceeding must be in writing and inform the responsible parent of his or her rights to review. The parent's copy of the decision may be sent by regular mail to the parent's most recent address of record.

(6) The proceedings under this subsection shall be conducted in accordance with the requirements of chapter 34.05 RCW, the administrative procedure act.

(7) The procedures of this section constitute the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order and suspension of a license under this section, and satisfy the requirements of RCW 34.05.422.

(8) For the purposes of this section, "good faith effort to comply" is a factual determination to be made by the administrative law judge based on the responsible parent's payment history, ability to pay, and efforts to find and maintain gainful employment. [2009 c 408 § 2.]

74.20A.324 License suspension—Certification of noncompliance. (1) The department may certify to the department of licensing and any appropriate licensing entity the name of a responsible parent who is not in compliance with a child support order if:

(a) Within twenty-one days after service of a notice issued under RCW 74.20A.320, the responsible parent does not request an adjudicative proceeding or file a motion with the appropriate court or administrative forum to modify the child support obligation;

(b) An adjudicative proceeding results in a decision that the responsible parent is not in compliance with a child support order and has not made a good faith effort to comply;

(c) The court enters a judgment on a petition for judicial review that finds the responsible parent is not in compliance with a child support order and has not made a good faith effort to comply; or

(d) The responsible parent fails to comply with a payment schedule established pursuant to RCW 74.20A.326.

(2) The department shall send by regular mail a copy of any certification of noncompliance filed with the department of licensing or a licensing entity to the responsible parent at the responsible parent's most recent address of record along with information as to how the parent may get his or her license reinstated.

(3) The department of licensing and a licensing entity shall, without undue delay, notify a responsible parent certified by the department under subsection (1) of this section that the parent's driver's license or other license has been suspended because the parent's name has been certified by the department as a responsible parent who is not in compliance with a child support order. [2009 c 408 § 3.]

74.20A.326 License suspension—Payment schedule arrangements. (1) If a responsible parent contacts the department's division of child support office indicated on the notice of noncompliance within twenty days of service of the notice provided in RCW 74.20A.320 and requests arrangement of a payment schedule, the department shall stay the certification of noncompliance during negotiation of the schedule for payment of arrears up to thirty days from the date of contact by the responsible parent.

(2) In proposing or approving a written payment schedule, the department or the administrative law judge shall take into consideration the amount of the arrearages, the amount of the current support order, the earnings of the responsible parent, and the needs of all children who rely on the responsible parent for support. The department or administrative law judge shall consider the individual financial circumstances of each responsible parent in evaluating the parent's ability to pay any proposed payment schedule and shall propose a fair and reasonable payment schedule tailored to the individual financial circumstances of the responsible parent. A payment schedule may include a graduated payment plan and may require a responsible parent to engage in employment-enhancing activities to attain a satisfactory payment level.

(3) A payment schedule may be for the payment of less than current monthly support for a reasonable time and is not required to include a lump sum payment for the amount of arrears. [2009 c 408 § 4.]

74.20A.328 License suspension—Rules. The department may adopt rules to implement and enforce the requirements of RCW 74.20A.320 and 74.20A.322 through 74.20A.326. [2009 c 408 § 5.]

74.20A.330 License suspension—Agreements between department and licensing entities—Identification of responsible parents. (1) The department and all of the various licensing entities subject to RCW 74.20A.320 shall enter into such agreements as are necessary to carry out the requirements of the license suspension program established in RCW 74.20A.320.

(2) The department and all licensing entities subject to RCW 74.20A.320 shall compare data to identify responsible parents who may be subject to the provisions of chapter 58, Laws of 1997. The comparison may be conducted electronically, or by any other means that is jointly agreeable between the department and the particular licensing entity. The data shared shall be limited to those items necessary to [for] implementation of chapter 58, Laws of 1997. The purpose of the comparison shall be to identify current licensees who are not in compliance with a child support order, and to provide to the department the following information regarding those licensees:

(a) Name;

(b) Date of birth;

(c) Address of record;

(d) Federal employer identification number and social security number;

(e) Type of license;

(f) Effective date of license or renewal;

(g) Expiration date of license; and

(h) Active or inactive status. [1997 c 58 § 803.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

74.20A.350 Noncompliance—Notice—Fines—License suspension—Hearings—Rules. (1) The division of child support may issue a notice of noncompliance to any person, firm, entity, or agency of state or federal government that the division believes is not complying with:

(a) A notice of payroll deduction issued under chapter 26.23 RCW;

(b) A lien, order to withhold and deliver, or assignment of earnings issued under this chapter;

(c) Any other wage assignment, garnishment, attachment, or withholding instrument properly served by the agency or firm providing child support enforcement services for another state, under Title IV-D of the federal social security act;

(d) A subpoena issued by the division of child support, or the agency or firm providing child support enforcement for another state, under Title IV-D of the federal social security act;

(e) An information request issued by the division of child support, or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, to an employer or entity required to respond to such requests under RCW 74.20A.360;

(f) The duty to report newly hired employees imposed by RCW 26.23.040; or

(g) The duty of a business, employer, or payroll processor that has received an income withholding order from the department of social and health services requiring payment to the Washington state support registry to remit withheld funds by electronic means imposed by RCW 26.23.065.

(2) Liability for noncompliance with a wage withholding, garnishment, order to withhold and deliver, or any other lien or attachment issued to secure payment of child support is governed by RCW 26.23.090 and 74.20A.100, except that liability for noncompliance with remittance time frames is governed by subsection (4) of this section.

(3) Fines for noncompliance by a business, employer, or payroll processor with the duty to remit withheld funds by electronic means imposed by RCW 26.23.065 are governed by subsection (4)(c) of this section.

(4) The division of child support may impose fines of up to one hundred dollars per occurrence for:

(a) Noncompliance with a subpoena or an information request issued by the division of child support, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act;

(b) Noncompliance with the required time frames for remitting withheld support moneys to the Washington state support registry, or the agency or firm providing child support enforcement services for another state, except that no liability shall be established for failure to make timely remittance unless the division of child support has provided the person, firm, entity, or agency of state or federal government with written warning:

(i) Explaining the duty to remit withheld payments promptly;

(ii) Explaining the potential for fines for delayed submission; and

(iii) Providing a contact person within the division of child support with whom the person, firm, entity, or agency of state or federal government may seek assistance with child support withholding issues;

(c) A business, employer, or payroll processor's noncompliance with the duty to remit withheld funds by electronic means imposed by RCW 26.23.065. The division of child support may not impose fines for failure to comply with this requirement unless it has provided the person, firm, entity, or agency of state or federal government with written warning:

(i) Explaining the duty to remit withheld payments by electronic means;

(ii) Explaining the potential for fines for failure to remit withheld payments by electronic means when required under RCW 26.23.065; and

(iii) Providing a contact person within the division of child support with whom the person, firm, entity, or agency of state or federal government may seek assistance with child support withholding issues.

(5) The division of child support may assess fines according to RCW 26.23.040 for failure to comply with employer reporting requirements.

(6) The division of child support may suspend licenses for failure to comply with a subpoena issued under RCW 74.20.225.

(7) The division of child support may serve a notice of noncompliance by personal service or by any method of mailing requiring a return receipt.

(8) The liability asserted by the division of child support in the notice of noncompliance becomes final and collectible on the twenty-first day after the date of service, unless within that time the person, firm, entity, or agency of state or federal government:

(a) Initiates an action in superior court to contest the notice of noncompliance;

(b) Requests a hearing by delivering a hearing request to the division of child support in accordance with rules adopted by the secretary under this section; or

(c) Contacts the division of child support and negotiates an alternate resolution to the asserted noncompliance or demonstrates that the person, firm, entity, or agency of state or federal government has complied with the child support processes.

(9) The notice of noncompliance shall contain:

(a) A full and fair disclosure of the rights and obligations created by this section; and

(b) Identification of the:

(i) Child support process with respect to which the division of child support is alleging noncompliance; and

(ii) State child support enforcement agency issuing the original child support process.

(10) In an administrative hearing convened under subsection (8)(b) of this section, the presiding officer shall determine whether or not, and to what extent, liability for noncompliance exists under this section, and shall enter an order containing these findings. If liability does exist, the presiding officer shall include language in the order advising the parties to the proceeding that the liability may be collected by any means available to the division of child support under subsection (13) of this section without further notice to the liable party.

(11) Hearings under this section are governed by the administrative procedure act, chapter 34.05 RCW.

(12) After the twenty days following service of the notice, the person, firm, entity, or agency of state or federal government may petition for a late hearing. A petition for a late hearing does not stay any collection action to recover the debt. A late hearing is available upon a showing of any of the grounds stated in civil rule 60 for the vacation of orders.

(13) The division of child support may collect any obligation established under this section using any of the remedies available under chapter 26.09, 26.18, 26.21A, 26.23, 74.20, or 74.20A RCW for the collection of child support.

(14) The division of child support may enter agreements for the repayment of obligations under this section. Agreements may:

(a) Suspend the obligation imposed by this section conditioned on future compliance with child support processes. Such suspension shall end automatically upon any failure to comply with a child support process. Amounts suspended become fully collectible without further notice automatically upon failure to comply with a child support process;

(b) Resolve amounts due under this section and provide for repayment.

(15) The secretary may adopt rules to implement this section. [2018 c 150 § 202; 1997 c 58 § 893.]

Effective date—2018 c 150 §§ 201-401: See note following RCW 26.23.065.

Additional notes found at www.leg.wa.gov

74.20A.360 Records access—Confidentiality—Nonliability—Penalty for noncompliance. (1) Notwithstanding any other provision of Washington law, the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act may access records of the following nature, in the possession of any agency or entity listed in this section:

(a) Records of state and local agencies, including but not limited to:

(i) The state registrar, including but not limited to records of birth, marriage, and death;

(ii) Tax and revenue records, including, but not limited to, information on residence addresses, employers, and assets;

(iii) Records concerning real and titled personal property;

(iv) Records of occupational, professional, and recreational licenses and records concerning the ownership and control of corporations, partnerships, and other business entities;

(v) Employment security records;

(vi) Records of agencies administering public assistance programs; and

(vii) Records of the department of corrections, and of county and municipal correction or confinement facilities;

(b) Records of public utilities and cable television companies relating to persons who owe or are owed support, or against whom a support obligation is sought, including names and addresses of the individuals, and employers' names and addresses pursuant to RCW 74.20.225 and RCW 74.20A.120; and

(c) Records held by financial institutions, pursuant to RCW 74.20A.370.

(2) Upon the request of the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the social security act, any employer shall provide information as to the employment, earnings, benefits, and residential address and phone number of any employee.

(3) Entities in possession of records described in subsection (1)(a) and (c) of this section must provide information and records upon the request of the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act. The division of child support may enter into agreements providing for electronic access to these records.

(4) Public utilities and cable television companies must provide the information in response to a judicial or administrative subpoena issued by the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act.

(5) Entities responding to information requests and subpoenas under this section are not liable for disclosing information pursuant to the request or subpoena.

(6) The division of child support shall maintain all information gathered under this section confidential and shall only disclose this information as provided under RCW 26.23.120.

(7) The division of child support may impose fines for noncompliance with this section using the notice of noncompliance under RCW 74.20A.350. [1997 c 58 § 897.]

Additional notes found at www.leg.wa.gov

74.20A.370 Financial institution data matches. (1) Each calendar quarter financial institutions doing business in the state of Washington shall report to the department the name, record address, social security number or other taxpayer identification number, and other information determined necessary by the department for each individual who maintains an account at such institution and is identified by the department as owing a support debt.

(2) The department and financial institutions shall enter into agreements to develop and operate a data match system, using automated data exchanges to the extent feasible, to minimize the cost of providing information required under subsection (1) of this section.

(3) The department may pay a reasonable fee to a financial institution for conducting the data match not to exceed the actual costs incurred.

(4) A financial institution is not liable for any disclosure of information to the department under this section.

(5) The division of child support shall maintain all information gathered under this section confidential and shall only disclose this information as provided under RCW 26.23.120. [1997 c 58 § 899.]

Additional notes found at www.leg.wa.gov

74.20A.900 Severability—Alternative when method of notification held invalid. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

If any method of notification provided for in this chapter is held invalid, service as provided for by the laws of the state of Washington for service of process in a civil action shall be substituted for the method held invalid. [1971 ex.s. c 164 § 27.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

74.20A.910 Savings clause. The repeal of RCW 74.20A.050 and the amendment of RCW 74.20A.030 and 74.20A.250 by this 1979 act is not intended to affect any existing or accrued right, any action or proceeding already taken or instituted, any administrative action already taken, or any rule, regulation, or order already promulgated. The repeal and amendments are not intended to revive any law heretofore repealed. [1979 ex.s. c 171 § 27.]

Additional notes found at www.leg.wa.gov

74.20A.920 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 § 180.]

Chapter 74.25 RCW
JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

Sections

74.25.040 Volunteer work—Child care or other work—Training. (1) Recipients of temporary assistance for needy families who are employed or participating in a work activity under *section 312 of this act may volunteer or work in a licensed child care facility. Licensed child care facilities participating in this effort shall provide care for the recipient's children and provide for the development of positive child care skills.

(2) The department shall train two hundred fifty recipients of temporary assistance for needy families to become family child care providers or child care center teachers. The department shall offer the training in rural and urban communities. The department shall adopt rules to implement the child care training program in this section.

(3) Recipients trained under this section shall provide child care services to clients of the department for two years following the completion of their child care training. [1997 c 59 § 30; 1997 c 58 § 405; 1994 c 299 § 8.]

Reviser's note: *(1) Section 312 of this act was vetoed by the governor.

(2) This section was amended by 1997 c 58 § 405 and by 1997 c 59 § 30, 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).

Intent—1997 c 58: See note following RCW 43.216.710.

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Additional notes found at www.leg.wa.gov

Chapter 74.25A RCW
EMPLOYMENT PARTNERSHIP PROGRAM

Sections

74.25A.005 Legislative findings. The legislature finds that the restructuring in the Washington economy has created rising public assistance caseloads and declining real wages for Washington workers. There is a profound need to develop partnership programs between the private and public sectors to create new jobs with adequate salaries and promotional opportunities for chronically unemployed and underemployed citizens of the state. Most public assistance recipients want to become financially independent through paid employment. A voluntary program which utilizes public wage subsidies and employer matching salaries has provided a beneficial financial incentive allowing public assistance recipients transition to permanent full-time employment. [1994 c 299 § 19; 1986 c 172 § 1. Formerly RCW 50.63.010.]

Additional notes found at www.leg.wa.gov

74.25A.010 Employment partnership program—Created—Goals. The employment partnership program is created to develop a series of geographically distributed model projects to provide permanent full-time employment for low-income and unemployed persons. The program shall be administered by the department of social and health services. The department shall contract for the program through local public or private nonprofit organizations. The goals of the program are as follows:

(1) To reduce inefficiencies in administration and provide model coordination of agencies with responsibilities for employment and human service delivery to unemployed persons;

(2) To create voluntary financial incentives to simultaneously reduce unemployment and welfare caseloads;

(3) To provide other state and federal support services to the client population to enable economic independence;

(4) To improve partnerships between the public and private sectors designed to move recipients of public assistance into productive employment; and

(5) To provide employers with information on federal targeted jobs tax credit and other state and federal tax incentives for participation in the program. [1994 c 299 § 20; 1986 c 172 § 2. Formerly RCW 50.63.020.]

74.25A.020 Pilot projects—Grants to be used as wage subsidies—Criteria. The secretary of the department of social and health services shall establish pilot projects that enable grants to be used as a wage subsidy. The department of social and health services shall comply with applicable federal statutes and regulations, and shall seek any waivers from the federal government necessary to operate the employment partnership program. The projects shall be available on an individual case-by-case basis or subject to the limitations outlined in RCW 74.25A.040 for the start-up or reopening of a plant under worker ownership. The projects shall be subject to the following criteria:

(1) It shall be a voluntary program and no person may have any sanction applied for failure to participate.

(2) Employment positions established by this chapter shall not be created as the result of, nor result in, any of the following:

(a) Displacement of current employees, including overtime currently worked by these employees;

(b) The filling of positions that would otherwise be promotional opportunities for current employees;

(c) The filling of a position, before compliance with applicable personnel procedures or provisions of collective bargaining agreements;

(d) The filling of a position created by termination, layoff, or reduction in workforce;

(e) The filling of a work assignment customarily performed by a worker in a job classification within a recognized collective bargaining unit in that specific work site, or the filling of a work assignment in any bargaining unit in which funded positions are vacant or in which regular employees are on layoff;

(f) A strike, lockout, or other bona fide labor dispute, or violation of any existing collective bargaining agreement between employees and employers;

(g) Decertification of any collective bargaining unit.

(3) Wages shall be paid at the usual and customary rate of comparable jobs and may include a training wage if permitted by applicable federal statutes and regulations;

(4) A recoupment process shall recover state supplemented wages from an employer when a job does not last six months following the subsidization period for reasons other than the employee voluntarily quitting or being fired for good cause as determined by the local employment partnership council under rules prescribed by the secretary;

(5) Job placements shall have promotional opportunities or reasonable opportunities for wage increases;

(6) Other necessary support services such as training, day care, medical insurance, and transportation shall be provided to the extent possible;

(7) Employers shall provide monetary matching funds of at least fifty percent of total wages;

(8) Wages paid to participants shall be a minimum of five dollars an hour; and

(9) The projects shall target the populations in the priority and for the purposes set forth in *RCW 74.25.020, to the extent that necessary support services are available. [1994 c 299 § 21; 1986 c 172 § 3. Formerly RCW 50.63.030.]

***Reviser's note:** The 1994 c 299 amendments to RCW 74.25.020 were vetoed by the governor. RCW 74.25.020 was subsequently repealed by 1997 c 58 § 322.

74.25A.030 Employer eligibility—Conditions. An employer, before becoming eligible to fill a position under the employment partnership program, shall certify to the local employment partnership council that the employment, offer of employment, or work activity complies with the following conditions:

(1) The conditions of work are reasonable and not in violation of applicable federal, state, or local safety and health standards;

(2) The assignments are not in any way related to political, electoral, or partisan activities;

(3) The employer shall provide industrial insurance coverage as required by Title 51 RCW;

(4) The employer shall provide unemployment compensation coverage as required by Title 50 RCW;

(5) The employment partnership program participants hired following the completion of the program shall be provided benefits equal to those provided to other employees including social security coverage, sick leave, the opportunity to join a collective bargaining unit, and medical benefits. [1994 c 299 § 22; 1986 c 172 § 4. Formerly RCW 50.63.040.]

74.25A.040 Diversion of grants to worker-owned businesses. Grants may be diverted for the start-up or retention of worker-owned businesses if:

(1) A feasibility study or business plan is completed on the proposed business; and

(2) The project is approved by the loan committee of the *Washington state development loan fund as created by RCW 43.168.110. [1986 c 172 § 5. Formerly RCW 50.63.050.]

***Reviser's note:** The "Washington state development loan fund" was renamed the "rural Washington loan fund" pursuant to 1999 c 164 § 504.

74.25A.045 Local employment partnership council. A local employment partnership council shall be established in each pilot project area to assist the department of social and health services in the administration of this chapter and to allow local flexibility in dealing with the particular needs of each pilot project area. Each council shall be primarily responsible for recruiting and encouraging participation of employment providers in the project site. Each council shall be composed of nine members who shall be appointed by the county legislative authority of the county in which the pilot project operates. Councilmembers shall be residents of or employers in the pilot project area in which they are appointed and shall serve three-year terms. The council shall have two members who are current or former recipients of the aid to families with dependent children or temporary assistance for needy families programs or food stamp or benefits program, two members who represent labor, and five members who represent the local business community. In addition, one person representing the local community service office of the department of social and health services, one person representing a community action agency or other nonprofit service provider, and one person from a local city or county government shall serve as nonvoting members. [1998 c 79 § 17; 1997 c 59 § 31; 1994 c 299 § 23.]

74.25A.050 Program participants—Eligibility for assistance programs. Participants shall be considered recipients of temporary assistance for needy families and remain eligible for medicaid benefits even if the participant does not receive a residual grant. Work supplementation participants shall be eligible for (1) the thirty-dollar plus one-third of earned income exclusion from income, (2) the work related expense disregard, and (3) any applicable child care expense disregard deemed available to recipient of aid in computing his or her grant under this chapter, unless prohibited by federal law. [1997 c 59 § 32; 1994 c 299 § 24; 1986 c 172 § 6. Formerly RCW 50.63.060.]

74.25A.060 Program participants—Benefits and salary not to be diminished. An applicant or recipient of aid under this chapter who participates in the employment partnership program shall be guaranteed that the value of the benefits available to him or her before entry into the program shall not be diminished. In addition, a participant employed under this chapter shall be treated in the same manner as are regular employees, and the participant's salary shall be the amount that he or she would have received if employed in that position and not participating under this chapter. [1986 c 172 § 7. Formerly RCW 50.63.070.]

74.25A.070 Program participants—Classification under federal job training law. Applicants for and recipients of aid under this chapter are "individuals in special need" of training as described in section 2 of the federal job training partnership act, 29 U.S.C. Sec. 1501 et seq., "individuals who require special assistance" as provided in section 123 of that act, and "most in need" of employment and training opportu-

nities as described in section 141 of that act. [1986 c 172 § 8. Formerly RCW 50.63.080.]

74.25A.080 Department of social and health services to seek federal funds. The department of social and health services shall seek any federal funds available for implementation of this chapter, including, but not limited to, funds available under Title IV of the federal social security act (42 U.S.C. Sec. 601 et seq.) for the job opportunities and basic skills program. [1994 c 299 § 25; 1986 c 172 § 9. Formerly RCW 50.63.090.]

74.25A.900 Intent—Finding—Severability—Conflict with federal requirements—1994 c 299. See notes following RCW 74.12.400.

Chapter 74.26 RCW
SERVICES FOR CHILDREN WITH MULTIPLE HANDICAPS

Sections

74.26.010 Legislative intent. In recognition of the fact that there is a small population of children with multiple disabilities and specific and continuing medical needs now being served in high-daily-cost hospitals that could be more appropriately and cost-efficiently served in alternative residential alternatives, it is the intent of the legislature to establish a controlled program to develop and review an alternative service delivery system for certain multiply handicapped children who have continuing intensive medical needs but who are not required to continue in residence in a hospital setting. [1980 c 106 § 1.]

74.26.020 Eligibility criteria. (1) To be eligible for services under this alternative program, a person must meet all the following criteria:

(a) The individual must be under twenty-two years of age;

(b) The individual must be under the care of a physician and such physician must diagnose the child's condition as sufficiently serious to warrant eligibility;

(c) The individual must be presently residing in, or in immediate jeopardy of residing in, a hospital or other residential medical facility for the purpose of receiving intensive support medical services; and

(d) The individual must fall within one of the four functional/medical definitional categories listed in subsection (2) of this section.

(2) Functional/medical definitional categories:

(a) Respiratory impaired; with an acquired or congenital defect of the oropharynx, trachea, bronchial tree, or lung requiring continuing dependency on a respiratory assistive device in order to allow the disease process to heal or the individual to grow to a sufficient size to live as a normal person;

(b) Respiratory with multiple physical impairments; with acquired or congenital defects of the central nervous system or multiple organ systems requiring continued dependency on a respiratory assistive device and/or other medical, surgical, and physical therapy treatments in order to allow the disease process to heal or the individual to gain sufficient size to permit surgical correction of the defect or the individual to grow large and strong enough and acquire sufficient skills in self-care to allow survival in a nonmedical/therapy intensive environment;

(c) Multiply physically impaired; with congenital or acquired defects of multiple systems and at least some central nervous system impairment that causes loss of urine and stool sphincter control as well as paralysis or loss or reduction of two or more extremities, forcing the individual to be dependent on a wheelchair or other total body mobility device, also requiring medical, surgical, and physical therapy intervention in order to allow the individual to grow to a size that permits surgical correction of the defects or allows the individual to grow large and strong enough and acquire sufficient skills in self-care to allow survival in a nonmedical/therapy intensive environment;

(d) Static encephalopathies; with severe brain insults of acquired or congenital origin causing the individual to be medically diagnosed as totally dependent for all bodily and social functions except cardiorespiratory so that the individual requires continuous long-term daily medical/nursing care. [1980 c 106 § 2.]

74.26.030 Program plan for services—Local agency support. (1) A written individual program plan shall be developed for each child served under this controlled program by the division of developmental disabilities in cooperation with the child's parents or if available, legal guardians, and under the supervision of the child's primary health care provider.

(2) The plan shall provide for the systematic provision of all required services. The services to be available as required by the child's individual needs shall include: (a) Nursing care, including registered and licensed practical nurses, and properly trained nurse's aides; (b) physicians, including surgeons, general and family practitioners, and specialists in the child's particular diagnosis on either a referral, consultive, or ongoing treatment basis; (c) respiratory therapists and devices; (d) dental care of both routine and emergent nature; (e) ongoing nutritional consultation from a trained professional; (f) communication disorder therapy; (g) physical and occupational habilitation and rehabilitation therapy and devices; (h) special and regular education; (i) recreation therapy; (j) psychological counseling; and (k) transportation.

(3) A portion of these required services can be provided from state and local agencies having primary responsibility for such services, but the ultimate responsibility for ensuring and coordinating the delivery of all necessary services shall rest with the division of developmental disabilities. [1980 c 106 § 3.]

74.26.040 Administrative responsibility—Regulations. The department of social and health services, division of developmental disabilities, shall bear all administrative responsibility for the effective and rapid implementation of

this controlled program. The division shall promulgate regulations within sixty days after June 12, 1980, to provide minimum standards and qualifications for the following program elements:

(1) Residential services;

(2) Medical services;

(3) Day program;

(4) Facility requirements and accessibility for all buildings in which the program is to be conducted;

(5) Staff qualifications;

(6) Staff training;

(7) Program evaluation; and

(8) Protection of client's rights, confidentiality, and informed consent. [1980 c 106 § 4.]

74.26.050 Contracts for services—Supervision. The division of developmental disabilities shall implement this controlled program through a "request-for-proposal" method and subsequent contracts for services with any local, county, or state agency demonstrating a probable ability to meet the program's goals. The proposals must demonstrate an ability to provide or insure the provision of all services set forth in RCW 74.26.030 if necessary for the children covered by the proposals.

The division of developmental disabilities shall thoroughly supervise, review, and audit fiscal and program performance for the individuals served under this control program. A comparison of all costs incurred by all public agencies for each individual prior to the implementation of this program and all costs incurred after one year under this program shall be made and reported back to the legislature in the 1982 session. [1980 c 106 § 5.]

74.26.060 Program costs—Liability of insurers. This program or any components necessary to the child shall be available to eligible children at no cost to their parents provided that any medical insurance benefits available to the child for his/her medical condition shall remain liable for payment for his/her cost of care. [1980 c 106 § 6.]

Chapter 74.29 RCW
REHABILITATION SERVICES FOR INDIVIDUALS WITH DISABILITIES

Sections

Department of social and health services (including division of vocational rehabilitation): Chapter 43.20A RCW.

Investment of accident, medical aid, reserve, industrial insurance rainy day supplemental pension funds: RCW 51.44.100.

74.29.005 Purpose. The purposes of this chapter are (1) to rehabilitate individuals with disabilities who have a barrier to employment so that they may prepare for and engage in a gainful occupation; (2) to provide persons with physical, mental, or sensory disabilities with a program of services which will result in greater opportunities for them to enter more fully into life in the community; (3) to promote activities which will assist individuals with disabilities to become self-sufficient and self-supporting; and (4) to encourage and develop community rehabilitation programs, job support services, and other resources needed by individuals with disabilities. [1993 c 213 § 1; 1969 ex.s. c 223 § 28A.10.005. Prior: 1967 c 118 § 1. Formerly RCW 28A.10.005, 28.10.005.]

74.29.010 Definitions. (1) "Independence" means a reasonable degree of restoration from dependency upon others to self-direction and greater control over circumstances of one's life for personal needs and care and includes but is not limited to the ability to live in one's home.

(2) "Individual with disabilities" means an individual:

(a) Who has a physical, mental, or sensory disability, which requires vocational rehabilitation services to prepare for, enter into, engage in, retain, or engage in and retain gainful employment consistent with his or her capacities and abilities; or

(b) Who has a physical, mental, or sensory impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of vocational rehabilitation or independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment.

(3) "Individual with severe disabilities" means an individual with disabilities:

(a) Who has a physical, mental, or sensory impairment that seriously limits one or more functional capacities, such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills, in terms of employment outcome, and/or independence and participation in family or community life;

(b) Whose rehabilitation can be expected to require multiple rehabilitation services over an extended period of time; and

(c) Who has one or more physical, mental, or sensory disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and rehabilitation needs to cause comparable substantial functional limitation.

(4) "Job support services" means ongoing goods and services provided after vocational rehabilitation, subject to available funds, that support an individual with severe disabilities in employment. Such services include, but are not limited to, extraordinary supervision or job coaching.

(5) "Physical, mental, or sensory disability" means a physical, mental, or sensory condition which materially limits, contributes to limiting or, if not corrected or accommo-

dated, will probably result in limiting an individual's activities or functioning.

(6) "Rehabilitation services" means goods or services provided to: (a) Determine eligibility and rehabilitation needs of individuals with disabilities, and/or (b) enable individuals with disabilities to attain or retain employment and/or independence, and/or (c) contribute substantially to the rehabilitation of a group of individuals with disabilities. To the extent federal funds are available, goods and services may include, but are not limited to, the establishment, construction, development, operation and maintenance of community rehabilitation programs and independent living centers, as well as special demonstration projects.

(7) "State agency" means the department of social and health services. [2010 c 94 § 26; 1993 c 213 § 2; 1970 ex.s. c 18 § 52; 1969 ex.s. c 223 § 28A.10.010. Prior: 1967 ex.s. c 8 § 41; 1967 c 118 § 2; 1957 c 223 § 1; 1933 c 176 § 2; RRS § 4925-2. Formerly RCW 28A.10.010, 28.10.010.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

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

Additional notes found at www.leg.wa.gov

74.29.020 Powers and duties of state agency. Subject to available funds, and consistent with federal law and regulations the state agency shall:

(1) Develop statewide rehabilitation programs;

(2) Provide vocational rehabilitation services, independent living services, and/or job support services to individuals with disabilities or severe disabilities;

(3) Disburse all funds provided by law and may receive, accept and disburse such gifts, grants, conveyances, devises and bequests of real and personal property from public or private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out rehabilitation services as specified by law and the regulations of the state agency; and may sell, lease or exchange real or personal property according to the terms and conditions thereof. Any money so received shall be deposited in the state treasury for investment, reinvestment or expenditure in accordance with the conditions of its receipt and RCW 43.88.180;

(4) Appoint and fix the compensation and prescribe the duties, of the personnel necessary for the administration of this chapter, unless otherwise provided by law;

(5) Make exploratory studies, do reviews, and research relative to rehabilitation;

(6) Coordinate with the state rehabilitation advisory council and the state independent living advisory council on the administration of the programs;

(7) Report to the governor and to the legislature on the administration of this chapter, as requested; and

(8) Adopt rules, in accord with chapter 34.05 RCW, necessary to carry out the purposes of this chapter. [1993 c 213 § 3; 1969 ex.s. c 223 § 28A.10.020. Prior: 1967 ex.s. c 8 § 42; 1967 c 118 § 6; 1963 c 135 § 1; 1957 c 223 § 3; 1933 c 176 § 3; RRS § 4925-3. Formerly RCW 28A.10.020, 28.10.030.]

74.29.037 Cooperative agreements with state and local agencies. The state agency may establish cooperative agreements with other state and local agencies. [1993 c 213 § 6; 1969 ex.s. c 223 § 28A.10.037. Prior: 1967 ex.s. c 8 § 45; 1967 c 118 § 7. Formerly RCW 28A.10.037, 28.10.037.]

74.29.050 Acceptance of federal aid—Generally. The state of Washington does hereby:

(1) Accept the provisions and maximum possible benefits resulting from any acts of congress which provide benefits for the purposes of this chapter;

(2) Designate the state treasurer as custodian of all moneys received by the state from appropriations made by the congress of the United States for purposes of this chapter, and authorize the state treasurer to make disbursements therefrom upon the order of the state agency; and

(3) Empower and direct the state agency to cooperate with the federal government in carrying out the provisions of this chapter or of any federal law or regulation pertaining to vocational rehabilitation, and to comply with such conditions as may be necessary to assure the maximum possible benefits resulting from any such federal law or regulation. [1969 ex.s. c 223 § 28A.10.050. Prior: 1967 ex.s. c 8 § 43; 1967 c 118 § 9; 1957 c 223 § 5; 1955 c 371 § 1; 1933 c 176 § 5; RRS § 4925-5. Formerly RCW 28A.10.050, 28.10.050.]

74.29.055 Acceptance of federal aid—Construction of chapter when part thereof in conflict with federal requirements which are condition precedent to allocation of federal funds. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict, and such findings or determination shall not affect the operation of the remainder of this chapter. [1969 ex.s. c 223 § 28A.10.055. Prior: 1967 c 118 § 10. Formerly RCW 28A.10.055, 28.10.055.]

74.29.080 Rehabilitation and job support services—Procedure—Register of eligible individuals and organizations. (1) Determination of eligibility and need for rehabilitation services and determination of eligibility for job support services shall be made by the state agency for each individual according to its established rules, policies, procedures, and standards.

(2) The state agency may purchase, from any source, rehabilitation services and job support services for individuals with disabilities, subject to the individual's income or other resources that are available to contribute to the cost of such services.

(3) The state agency shall maintain registers of individuals and organizations which meet required standards and qualify to provide rehabilitation services and job support services to individuals with disabilities. Eligibility of such individuals and organizations shall be based upon standards and criteria promulgated by the state agency. [1993 c 213 § 4; 1983 1st ex.s. c 41 § 16; 1979 c 151 § 11; 1972 ex.s. c 15 § 1; 1970 ex.s. c 18 § 53; 1970 ex.s. c 15 § 23; 1969 ex.s. c 223 § 28A.10.080. Prior: 1969 c 105 § 2; 1967 ex.s. c 8 § 46; 1967 c 118 § 8. Formerly RCW 28A.10.080, 28.10.080.]

Additional notes found at www.leg.wa.gov

Chapter 74.31 RCW
TRAUMATIC BRAIN INJURIES

Sections

74.31.005 Findings—Intent. The center for disease control estimates that at least five million three hundred thousand Americans, approximately two percent of the United States population, currently have a long-term or lifelong need for help to perform activities of daily living as a result of a traumatic brain injury. Each year approximately one million four hundred thousand people in this country, including children, sustain traumatic brain injuries as a result of a variety of causes including falls, motor vehicle injuries, being struck by an object, or as a result of an assault and other violent crimes, including domestic violence. Additionally, there are significant numbers of veterans who sustain traumatic brain injuries as a result of their service in the military.

Prevention and the provision of appropriate supports and services in response to traumatic brain injury are consistent with the governor's executive order No. 10-01, "Implementing Health Reform the Washington Way," which recognizes protection of public health and the improvement of health status as essential responsibilities of the public health system.

Traumatic brain injury can cause a wide range of functional changes affecting thinking, sensation, language, or emotions. It can also cause epilepsy and increase the risk for conditions such as Alzheimer's disease, Parkinson's disease, and other brain disorders that become more prevalent with age. The impact of a traumatic brain injury on the individual and family can be devastating.

The legislature recognizes that current programs and services are not funded or designed to address the diverse needs of this population. It is the intent of the legislature to develop a comprehensive plan to help individuals with traumatic brain injuries meet their needs. The legislature also recognizes the efforts of many in the private sector who are providing services and assistance to individuals with traumatic brain injuries. The legislature intends to bring together those in both the public and private sectors with expertise in this area to address the needs of this growing population. [2011 c 143 § 1; 2007 c 356 § 1.]

Additional notes found at www.leg.wa.gov

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

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

(2) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

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

(4) "Traumatic brain injury" means injury to the brain caused by physical trauma resulting from, but not limited to, incidents involving motor vehicles, sporting events, falls, and physical assaults. Documentation of traumatic brain injury shall be based on adequate medical history, neurological examination, mental status testing, or neuropsychological evaluation. A traumatic brain injury shall be of sufficient severity to result in impairments in one or more of the following areas: Cognition; language memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; or information processing. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(5) "Traumatic brain injury account" means the account established under RCW 74.31.060.

(6) "Council" means the Washington traumatic brain injury strategic partnership advisory council created under RCW 74.31.020. [2007 c 356 § 2.]

Additional notes found at www.leg.wa.gov

74.31.020 Washington traumatic brain injury strategic partnership advisory council—Members—Expenses—Appointment—Duties. (1) The Washington traumatic brain injury strategic partnership advisory council is established as an advisory council to the governor, the legislature, and the secretary of the department of social and health services.

(2) The council shall be composed of:

(a) The following members who shall be appointed by the governor:

(i) A representative from a Native American tribe located in Washington state;

(ii) Two representatives from a nonprofit organization serving individuals with traumatic brain injury;

(iii) An individual with expertise in working with children with traumatic brain injuries;

(iv) A physician who has experience working with individuals with traumatic brain injuries;

(v) A neuropsychologist who has experience working with persons with traumatic brain injuries;

(vi) A social worker or clinical psychologist who has experience in working with persons who have sustained traumatic brain injuries;

(vii) A rehabilitation specialist, such as a speech pathologist, vocational rehabilitation counselor, occupational therapist, or physical therapist who has experience working with persons with traumatic brain injuries;

(viii) Two persons who are individuals with a traumatic brain injury;

(ix) Two persons who are family members of individuals with traumatic brain injuries; and

(x) Two members of the public who have experience with issues related to the causes of traumatic brain injuries; and

(b) The following agency members:

(i) The secretary or the secretary's designee, and representatives from the following: The division of behavioral

health and recovery services, the aging and disability services administration, and the division of vocational rehabilitation;

(ii) The secretary of health or the secretary's designee;

(iii) The secretary of corrections or the secretary's designee;

(iv) The secretary of children, youth, and families or the secretary's designee;

(v) A representative of the department of commerce with expertise in housing;

(vi) A representative from the Washington state department of veterans affairs;

(vii) A representative from the national guard; and

(viii) The executive director of the Washington protection and advocacy system or the executive director's designee.

(3) Councilmembers shall not be compensated for serving on the council, but may be reimbursed for all reasonable expenses related to costs incurred in participating in meetings for the council.

(4) No member may serve more than two consecutive terms.

(5) The appointed members of the council shall, to the extent possible, represent rural and urban areas of the state.

(6) A chairperson shall be elected every two years by majority vote from among the councilmembers. The chairperson shall act as the presiding officer of the council.

(7) The duties of the council include:

(a) Collaborating with the department to develop and revise as needed a comprehensive statewide plan to address the needs of individuals with traumatic brain injuries;

(b) Providing recommendations to the department on criteria to be used to select programs facilitating support groups for individuals with traumatic brain injuries and their families under RCW 74.31.050;

(c) By January 15, 2013, and every two years thereafter, developing a report in collaboration with the department and submitting it to the legislature and the governor on the following:

(i) Identifying the activities of the council in the implementation of the comprehensive statewide plan;

(ii) Recommendations for the revisions to the comprehensive statewide plan;

(iii) Recommendations for using the traumatic brain injury account established under RCW 74.31.060 to form strategic partnerships and to foster the development of services and supports for individuals impacted by traumatic brain injuries; and

(iv) Recommendations for a council staffing plan for council support under RCW 74.31.030.

(8) The council may utilize the advice or services of a nationally recognized expert, or other individuals as the council deems appropriate, to assist the council in carrying out its duties under this section. [2019 c 181 § 3; 2018 c 58 § 55; 2011 c 143 § 2; 2007 c 356 § 3.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

Additional notes found at www.leg.wa.gov

74.31.030 Staff support—Department powers and duties—Comprehensive plan. (1) In response to council recommendations developed pursuant to RCW 74.31.020, the department shall include in the comprehensive statewide plan a staffing plan for providing adequate support for council activities for positions funded by the traumatic brain injury account established in RCW 74.31.060 and designate at least one staff person who shall be responsible for the following:

(a) Coordinating policies, programs, and services for individuals with traumatic brain injuries; and

(b) Providing staff support to the council created in RCW 74.31.020.

(2) The department shall provide data and information to the council established under RCW 74.31.020 that is requested by the council and is in the possession or control of the department.

(3) The department shall implement, within funds appropriated for this specific purpose, the comprehensive statewide plan to address the needs of individuals impacted by traumatic brain injuries, including the use of public-private partnerships and a public awareness campaign. The comprehensive plan should be created in collaboration with the council and should consider the following:

(a) Building provider capacity and provider training;

(b) Improving the coordination of services;

(c) The feasibility of establishing agreements with private sector agencies or tribal governments to develop services for individuals with traumatic brain injuries; and

(d) Other areas the council deems appropriate.

(4) The department shall:

(a) Assure that information and referral services are provided to individuals with traumatic brain injuries. The referral services may be funded from the traumatic brain injury account established under RCW 74.31.060;

(b) Encourage and facilitate the following:

(i) Collaboration among state agencies that provide services to individuals with traumatic brain injuries;

(ii) Collaboration among organizations and entities that provide services to individuals with traumatic brain injuries; and

(iii) Community participation in program implementation; and

(c) Have the authority to accept, expend, or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purpose of this chapter. [2011 c 143 § 3; 2010 1st sp.s. c 37 § 943; 2007 c 356 § 4.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Additional notes found at www.leg.wa.gov

74.31.040 Public awareness campaign. In collaboration with the council, the department shall conduct a public awareness campaign that utilizes funding from the traumatic brain injury account to leverage a private advertising campaign to persuade Washington residents to be aware and concerned about the issues facing individuals with traumatic brain injuries through all forms of media including television, radio, and print. [2011 c 143 § 4; 2007 c 356 § 5.]

Additional notes found at www.leg.wa.gov

74.31.050 Support group programs—Funding—Recommendations. (1) The department shall provide funding from the traumatic brain injury account established by

RCW 74.31.060 to programs that facilitate support groups to individuals with traumatic brain injuries and their families.

(2) The department shall use a request for proposal process to select the programs to receive funding. The council shall provide recommendations to the department on the criteria to be used in selecting the programs. [2011 c 143 § 5; 2007 c 356 § 6.]

Additional notes found at www.leg.wa.gov

74.31.060 Traumatic brain injury account. The traumatic brain injury account is created in the state treasury. The fee imposed under RCW 46.63.110(7)(c) must be deposited into the account. Moneys in the account may be spent only after appropriation, and may be used only to support the activities in the statewide traumatic brain injury comprehensive plan, to provide a public awareness campaign and services relating to traumatic brain injury under RCW 74.31.040 and 74.31.050, for information and referral services, and for costs of required department staff who are providing support for the council under RCW 74.31.020 and 74.31.030. The secretary of the department of social and health services has the authority to administer the funds. The department must make every effort to disburse the incremental revenue that is the result of the fee increased under RCW 46.63.110(7)(c) in a diverse manner to include rural areas of the state. [2019 c 181 § 2; 2011 c 143 § 6; 2010 1st sp.s. c 37 § 944; 2007 c 356 § 7.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Additional notes found at www.leg.wa.gov

74.31.070 Statewide response to traumatic brain injuries suffered by domestic violence survivors—Recommendations—Educational handout—Web site. (1) The department, in consultation with the council and at least one representative of a community-based domestic violence program and one medical professional with experience treating survivors of domestic violence, shall develop recommendations to improve the statewide response to traumatic brain injuries suffered by domestic violence survivors. In developing recommendations, the department may consider the creation of an educational handout, to be updated on a periodic basis, regarding traumatic brain injury to be provided to victims of domestic violence. The handout may include the information and screening tool described in subsection (2) of this section.

(2)(a) The department, in consultation with the council, shall establish and recommend or develop content for a statewide web site for victims of domestic violence to include:

(i) An explanation of the potential for domestic abuse to lead to traumatic brain injury;

(ii) Information on recognizing cognitive, behavioral, and physical symptoms of traumatic brain injury as well as potential impacts to a person's emotional well-being and mental health;

(iii) A self-screening tool for traumatic brain injury; and

(iv) Recommendations for persons with traumatic brain injury to help address or cope with the injury.

(b) The department must update the web site created under this subsection on a periodic basis. [2019 c 110 § 1.]

Chapter 74.34 RCW
ABUSE OF VULNERABLE ADULTS

Sections

Domestic violence prevention, authority of department of social and health services to seek relief on behalf of vulnerable adults: RCW 26.50.021.

Patients in nursing homes and hospitals, abuse: Chapter 70.124 RCW.

74.34.005 Findings. The legislature finds and declares that:

(1) Some adults are vulnerable and may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult;

(2) A vulnerable adult may be home bound or otherwise unable to represent himself or herself in court or to retain legal counsel in order to obtain the relief available under this chapter or other protections offered through the courts;

(3) A vulnerable adult may lack the ability to perform or obtain those services necessary to maintain his or her well-being because he or she lacks the capacity for consent;

(4) A vulnerable adult may have health problems that place him or her in a dependent position;

(5) The department and appropriate agencies must be prepared to receive reports of abandonment, abuse, financial exploitation, or neglect of vulnerable adults;

(6) The department must provide protective services in the least restrictive environment appropriate and available to the vulnerable adult. [1999 c 176 § 2.]

Findings—Purpose—1999 c 176: "The legislature finds that the provisions for the protection of vulnerable adults found in chapters 26.44, 70.124, and 74.34 RCW contain different definitions for abandonment, abuse, exploitation, and neglect. The legislature finds that combining the sections of these chapters that pertain to the protection of vulnerable adults would better serve this state's population of vulnerable adults. The purpose of chapter 74.34 RCW is to provide the department and law enforcement agencies with the authority to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults and to provide protective services and legal remedies to protect these vulnerable adults." [1999 c 176 § 1.]

Additional notes found at www.leg.wa.gov

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

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

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(c) "Mental abuse" means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(d) "Personal exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(e) "Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that: (i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW; (ii) is not medically authorized; or (iii) otherwise constitutes abuse under this section.

(3) "Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

(4) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

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

(6) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department.

(7) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(8) "Financial institution" has the same meaning as in RCW 30A.22.040 and 30A.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

(9) "Hospital" means a facility licensed under chapter 70.41 or 71.12 RCW or a state hospital defined in chapter 72.23 RCW and any employee, agent, officer, director, or independent contractor thereof.

(10) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under *RCW 11.88.010(1) (a), (b), (c), or (d).

(11) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(12) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(13)(a) "Isolate" or "isolation" means to restrict a vulnerable adult's ability to communicate, visit, interact, or otherwise associate with persons of his or her choosing. Isolation may be evidenced by acts including but not limited to:

(i) Acts that prevent a vulnerable adult from sending, making, or receiving his or her personal mail, electronic communications, or telephone calls; or

(ii) Acts that prevent or obstruct the vulnerable adult from meeting with others, such as telling a prospective visitor or caller that a vulnerable adult is not present, or does not wish contact, where the statement is contrary to the express wishes of the vulnerable adult.

(b) The term "isolate" or "isolation" may not be construed in a manner that prevents a guardian or limited guardian from performing his or her fiduciary obligations under *chapter 11.92 RCW or prevents a hospital or facility from providing treatment consistent with the standard of care for delivery of health services.

(14) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(15) "Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are (a) medically authorized, as required, and (b) used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

(16) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(17) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(18) "Physical restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include (a) briefly holding without undue force a vulnerable adult in order to calm or comfort him or her, or (b) holding a vulnerable adult's hand to safely escort him or her from one area to another.

(19) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(20) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(21) "Social worker" means:

(a) A social worker as defined in RCW 18.320.010(2); or

(b) Anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of vulnerable adults, or providing social services to vulnerable adults, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(22) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under *chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

(23) "Vulnerable adult advocacy team" means a team of three or more persons who coordinate a multidisciplinary process, in compliance with chapter 266, Laws of 2017 and the protocol governed by RCW 74.34.320, for preventing, identifying, investigating, prosecuting, and providing services related to abuse, neglect, or financial exploitation of vulnerable adults. [2019 c 325 § 5030; 2018 c 201 § 9016. Prior: 2017 c 268 § 2; 2017 c 266 § 12; 2015 c 268 § 1; 2013 c 263 § 1; 2012 c 10 § 62; prior: 2011 c 170 § 1; 2011 c 89 § 18; 2010 c 133 § 2; 2007 c 312 § 1; 2006 c 339 § 109; 2003 c 230 § 1; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

***Reviser's note:** Chapters 11.88 and 11.92 RCW were repealed in their entirety by 2019 c 437 § 801, effective January 1, 2021.

Effective date—2019 c 325 §§ 1003 and 5030: See note following RCW 71.24.016.

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

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Application—2012 c 10: See note following RCW 18.20.010.

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Intent—2006 c 339: "It is the intent of the legislature to provide assistance for jurisdictions enforcing illegal drug laws that have historically been underserved by federally funded state narcotics task forces and are considered to be major transport areas of narcotics traffickers." [2006 c 339 § 103.]

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

74.34.025 Limitation on recovery for protective services and benefits. The cost of benefits and services provided to a vulnerable adult under this chapter with state funds only does not constitute an obligation or lien and is not recoverable from the recipient of the services or from the recipient's estate, whether by lien, adjustment, or any other means of recovery. [1999 c 176 § 4; 1997 c 392 § 304.]

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.

74.34.035 Reports—Mandated and permissive—Contents—Confidentiality. (1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

(2) When there is reason to suspect that sexual assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) When there is reason to suspect that the death of a vulnerable adult was caused by abuse, neglect, or abandonment by another person, mandated reporters shall, pursuant to RCW 68.50.020, report the death to the medical examiner or coroner having jurisdiction, as well as the department and local law enforcement, in the most expeditious manner possible. A mandated reporter is not relieved from the reporting requirement provisions of this subsection by the existence of a previously signed death certificate. If abuse, neglect, or abandonment caused or contributed to the death of a vulnerable adult, the death is a death caused by unnatural or unlawful means, and the body shall be the jurisdiction of the coroner or medical examiner pursuant to RCW 68.50.010.

(6) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

(7) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

(8) Each report, oral or written, must contain as much as possible of the following information:

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

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

(9) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential.

(10) In conducting an investigation of abandonment, abuse, financial exploitation, self-neglect, or neglect, the department or law enforcement, upon request, must have access to all relevant records related to the vulnerable adult that are in the possession of mandated reporters and their employees, unless otherwise prohibited by law. Records maintained under RCW 4.24.250, 18.20.390, 43.70.510, 70.41.200, 70.230.080, and 74.42.640 shall not be subject to the requirements of this subsection. Providing access to records relevant to an investigation by the department or law enforcement under this provision may not be deemed a violation of any confidential communication privilege. Access to any records that would violate attorney-client privilege shall not be provided without a court order unless otherwise required by court rule or caselaw. [2013 c 263 § 2; 2010 c 133 § 4; 2003 c 230 § 2; 1999 c 176 § 5.]

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

74.34.040 Reports—Contents—Identity confidential. The reports made under *RCW 74.34.030 shall contain the following information if known:

(1) Identification of the vulnerable adult;

(2) The nature and extent of the suspected abuse, neglect, exploitation, or abandonment;

(3) Evidence of previous abuse, neglect, exploitation, or abandonment;

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

(5) Any other helpful information.

Unless there is a judicial proceeding or the person consents, the identity of the person making the report is confidential. [1986 c 187 § 2; 1984 c 97 § 10.]

***Reviser's note:** RCW 74.34.030 was repealed by 1999 c 176 § 35.

74.34.050 Immunity from liability. (1) A person participating in good faith in making a report under this chapter or testifying about alleged abuse, neglect, abandonment, financial exploitation, or self-neglect of a vulnerable adult in a judicial or administrative proceeding under this chapter is immune from liability resulting from the report or testimony. The making of permissive reports as allowed in this chapter does not create any duty to report and no civil liability shall attach for any failure to make a permissive report as allowed under this chapter.

(2) Conduct conforming with the reporting and testifying provisions of this chapter shall not be deemed a violation of any confidential communication privilege. Nothing in this chapter shall be construed as superseding or abridging remedies provided in chapter 4.92 RCW. [1999 c 176 § 6; 1997 c 386 § 34; 1986 c 187 § 3; 1984 c 97 § 11.]

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

74.34.053 Failure to report—False reports—Penalties. (1) A person who is required to make a report under this chapter and who knowingly fails to make the report is guilty of a gross misdemeanor.

(2) A person who intentionally, maliciously, or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult is guilty of a misdemeanor. [1999 c 176 § 7.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.063 Response to reports—Timing—Reports to law enforcement agencies—Notification to licensing authority. (1) The department shall initiate a response to a report, no later than twenty-four hours after knowledge of the report, of suspected abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult.

(2) When the initial report or investigation by the department indicates that the alleged abandonment, abuse, financial exploitation, or neglect may be criminal, the department shall make an immediate report to the appropriate law enforcement agency. The department and law enforcement will coordinate in investigating reports made under this chapter. The department may provide protective services and other remedies as specified in this chapter.

(3) The law enforcement agency or the department shall report the incident in writing to the proper county prosecutor or city attorney for appropriate action whenever the investigation reveals that a crime may have been committed.

(4) The department and law enforcement may share information contained in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults, consistent with RCW 74.04.060, chapter 42.56 RCW, and other applicable confidentiality laws.

(5) Unless prohibited by federal law, the department of social and health services may share with the department of children, youth, and families information contained in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults.

(6) The department shall notify the proper licensing authority concerning any report received under this chapter that alleges that a person who is professionally licensed, certified, or registered under Title 18 RCW has abandoned, abused, financially exploited, or neglected a vulnerable adult. [2017 3rd sp.s. c 6 § 818; 2005 c 274 § 354; 1999 c 176 § 8.]

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.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.067 Investigations—Interviews—Ongoing case planning—Agreements with tribes—Conclusion of investigation. (1) Where appropriate, an investigation by the department may include a private interview with the vulnerable adult regarding the alleged abandonment, abuse, financial exploitation, neglect, or self-neglect.

(2) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(3) The department may conduct ongoing case planning and consultation with: (a) Those persons or agencies required to report under this chapter or submit a report under this chapter; (b) consultants designated by the department; and (c) designated representatives of Washington Indian tribes if client information exchanged is pertinent to cases under investigation or the provision of protective services. Information considered privileged by statute and not directly related to reports required by this chapter must not be divulged without a valid written waiver of the privilege.

(4) The department shall prepare and keep on file a report of each investigation conducted by the department for a period of time in accordance with policies established by the department.

(5) If the department has reason to believe that the vulnerable adult has suffered from abandonment, abuse, finan-

cial exploitation, neglect, or self-neglect, and lacks the ability or capacity to consent, and needs the protection of a guardian, the department may bring a guardianship action under *chapter 11.88 RCW.

(6) For purposes consistent with this chapter, the department, the certified professional guardian board, and the office of public guardianship may share information contained in reports and investigations of the abuse, abandonment, neglect, self-neglect, and financial exploitation of vulnerable adults. This information may be used solely for (a) recruiting or appointing appropriate guardians and (b) monitoring, or when appropriate, disciplining certified professional or public guardians. Reports of abuse, abandonment, neglect, self-neglect, and financial exploitation are confidential under RCW 74.34.095 and other laws, and secondary disclosure of information shared under this section is prohibited.

(7) When the investigation is completed and the department determines that an incident of abandonment, abuse, financial exploitation, neglect, or self-neglect has occurred, the department shall inform the vulnerable adult of their right to refuse protective services, and ensure that, if necessary, appropriate protective services are provided to the vulnerable adult, with the consent of the vulnerable adult. The vulnerable adult has the right to withdraw or refuse protective services.

(8) The department's adult protective services division may enter into agreements with federally recognized tribes to investigate reports of abandonment, abuse, financial exploitation, neglect, or self-neglect of vulnerable adults on property over which a federally recognized tribe has exclusive jurisdiction. If the department has information that abandonment, abuse, financial exploitation, or neglect is criminal or is placing a vulnerable adult on tribal property at potential risk of personal or financial harm, the department may notify tribal law enforcement or another tribal representative specified by the tribe. Upon receipt of the notification, the tribe may assume jurisdiction of the matter. Neither the department nor its employees may participate in the investigation after the tribe assumes jurisdiction. The department, its officers, and its employees are not liable for any action or inaction of the tribe or for any harm to the alleged victim, the person against whom the allegations were made, or other parties that occurs after the tribe assumes jurisdiction. Nothing in this section limits the department's jurisdiction and authority over facilities or entities that the department licenses or certifies under federal or state law.

(9) The department may photograph a vulnerable adult or their environment for the purpose of providing documentary evidence of the physical condition of the vulnerable adult or his or her environment. When photographing the vulnerable adult, the department shall obtain permission from the vulnerable adult or his or her legal representative unless immediate photographing is necessary to preserve evidence. However, if the legal representative is alleged to have abused, neglected, abandoned, or exploited the vulnerable adult, consent from the legal representative is not necessary. No such consent is necessary when photographing the physical environment.

(10) When the investigation is complete and the department determines that the incident of abandonment, abuse, financial exploitation, or neglect has occurred, the department shall inform the facility in which the incident occurred, consistent with confidentiality requirements concerning the vulnerable adult, witnesses, and complainants. [2013 c 263 § 3; 2011 c 170 § 2; 2007 c 312 § 2; 1999 c 176 § 9.]

***Reviser's note:** Chapter 11.88 RCW was repealed in its entirety by 2019 c 437 § 801, effective January 1, 2021.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.068 Investigation results—Report—Rules. ***(Effective until January 1, 2020.)*** (1) After the investigation is complete, the department may provide a written report of the outcome of the investigation to an agency or program described in this subsection when the department determines from its investigation that an incident of abuse, abandonment, financial exploitation, or neglect occurred. Agencies or programs that may be provided this report are home health, hospice, or home care agencies, or after January 1, 2002, any in-home services agency licensed under chapter 70.127 RCW, a program authorized under chapter 71A.12 RCW, an adult day care or day health program, behavioral health organizations authorized under chapter 71.24 RCW, or other agencies. The report may contain the name of the vulnerable adult and the alleged perpetrator. The report shall not disclose the identity of the person who made the report or any witness without the written permission of the reporter or witness. The department shall notify the alleged perpetrator regarding the outcome of the investigation. The name of the vulnerable adult must not be disclosed during this notification.

(2) The department may also refer a report or outcome of an investigation to appropriate state or local governmental authorities responsible for licensing or certification of the agencies or programs listed in subsection (1) of this section.

(3) The department shall adopt rules necessary to implement this section. [2014 c 225 § 103; 2001 c 233 § 2.]

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

Finding—2001 c 233: "The legislature recognizes that vulnerable adults, while living in their own homes, may be abused, neglected, financially exploited, or abandoned by individuals entrusted to provide care for them. The individuals who abuse, neglect, financially exploit, or abandon vulnerable adults may be employed by, under contract with, or volunteering for an agency or program providing care for vulnerable adults. The legislature has given the department of social and health services the responsibility to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults and to provide protective services and other legal remedies to protect these vulnerable adults. The legislature finds that in order to continue to protect vulnerable adults, the department of social and health services be given the authority to release report information and to release the results of an investigation to the agency or program with which the individual investigated is employed, contracted, or engaged as a volunteer." [2001 c 233 § 1.]

74.34.068 Investigation results—Report—Rules. ***(Effective January 1, 2020.)*** (1) After the investigation is complete, the department may provide a written report of the outcome of the investigation to an agency or program described in this subsection when the department determines from its investigation that an incident of abuse, abandonment, financial exploitation, or neglect occurred. Agencies or programs that may be provided this report are home health, hospice, or home care agencies, or after January 1, 2002, any in-home services agency licensed under chapter 70.127 RCW, a program authorized under chapter 71A.12 RCW, an adult day care or day health program, behavioral health administrative

services organizations and managed care organizations authorized under chapter 71.24 RCW, or other agencies. The report may contain the name of the vulnerable adult and the alleged perpetrator. The report shall not disclose the identity of the person who made the report or any witness without the written permission of the reporter or witness. The department shall notify the alleged perpetrator regarding the outcome of the investigation. The name of the vulnerable adult must not be disclosed during this notification.

(2) The department may also refer a report or outcome of an investigation to appropriate state or local governmental authorities responsible for licensing or certification of the agencies or programs listed in subsection (1) of this section.

(3) The department shall adopt rules necessary to implement this section. [2019 c 325 § 5031; 2014 c 225 § 103; 2001 c 233 § 2.]

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

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

Finding—2001 c 233: "The legislature recognizes that vulnerable adults, while living in their own homes, may be abused, neglected, financially exploited, or abandoned by individuals entrusted to provide care for them. The individuals who abuse, neglect, financially exploit, or abandon vulnerable adults may be employed by, under contract with, or volunteering for an agency or program providing care for vulnerable adults. The legislature has given the department of social and health services the responsibility to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults and to provide protective services and other legal remedies to protect these vulnerable adults. The legislature finds that in order to continue to protect vulnerable adults, the department of social and health services be given the authority to release report information and to release the results of an investigation to the agency or program with which the individual investigated is employed, contracted, or engaged as a volunteer." [2001 c 233 § 1.]

74.34.070 Cooperative agreements for services. The department may develop cooperative agreements with community-based agencies providing services for vulnerable adults. The agreements shall cover: (1) The appropriate roles and responsibilities of the department and community-based agencies in identifying and responding to reports of alleged abuse; (2) the provision of case-management services; (3) standardized data collection procedures; and (4) related coordination activities. [1999 c 176 § 10; 1997 c 386 § 35; 1995 1st sp.s. c 18 § 87; 1984 c 97 § 13.]

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

74.34.080 Injunctions. If access is denied to an employee of the department seeking to investigate an allegation of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult by an individual, the department may seek an injunction to prevent interference with the investigation. The court shall issue the injunction if the department shows that:

(1) There is reasonable cause to believe that the person is a vulnerable adult and is or has been abandoned, abused, financially exploited, or neglected; and

(2) The employee of the department seeking to investigate the report has been denied access. [1999 c 176 § 11; 1984 c 97 § 14.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.090 Data collection system—Confidentiality. The department shall maintain a system for statistical data collection, accessible for bona fide research only as the department by rule prescribes. The identity of any person is strictly confidential. [1984 c 97 § 15.]

74.34.095 Confidential information—Disclosure. (1) The following information is confidential and not subject to disclosure, except as provided in this section:

(a) A report of abandonment, abuse, financial exploitation, or neglect made under this chapter;

(b) The identity of the person making the report; and

(c) All files, reports, records, communications, and working papers used or developed in the investigation or provision of protective services.

(2) Information considered confidential may be disclosed only for a purpose consistent with this chapter or as authorized by chapter 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care ombuds programs under federal law or state law, chapter 43.190 RCW.

(3) A court or presiding officer in an administrative proceeding may order disclosure of confidential information only if the court, or presiding officer in an administrative proceeding, determines that disclosure is essential to the administration of justice and will not endanger the life or safety of the vulnerable adult or individual who made the report. The court or presiding officer in an administrative hearing may place restrictions on such disclosure as the court or presiding officer deems proper. [2013 c 23 § 218; 2000 c 87 § 4; 1999 c 176 § 17.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.110 Protection of vulnerable adults—Petition for protective order. An action known as a petition for an order for protection of a vulnerable adult in cases of abandonment, abuse, financial exploitation, or neglect is created.

(1) A vulnerable adult, or interested person on behalf of the vulnerable adult, may seek relief from abandonment, abuse, financial exploitation, or neglect, or the threat thereof, by filing a petition for an order for protection in superior court.

(2) A petition shall allege that the petitioner, or person on whose behalf the petition is brought, is a vulnerable adult and that the petitioner, or person on whose behalf the petition is brought, has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by respondent.

(3) A petition shall be accompanied by affidavit made under oath, or a declaration signed under penalty of perjury, stating the specific facts and circumstances which demonstrate the need for the relief sought. If the petition is filed by an interested person, the affidavit or declaration must also include a statement of why the petitioner qualifies as an interested person.

(4) A petition for an order may be made whether or not there is a pending lawsuit, complaint, petition, or other action pending that relates to the issues presented in the petition for an order for protection.

(5) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices

shall make available the standardized forms and instructions required by RCW 74.34.115.

(6) Any assistance or information provided by any person, including, but not limited to, court clerks, employees of the department, and other court facilitators, to another to complete the forms provided by the court in subsection (5) of this section does not constitute the practice of law.

(7) A petitioner is not required to post bond to obtain relief in any proceeding under this section.

(8) An action under this section shall be filed in the county where the vulnerable adult resides; except that if the vulnerable adult has left or been removed from the residence as a result of abandonment, abuse, financial exploitation, or neglect, or in order to avoid abandonment, abuse, financial exploitation, or neglect, the petitioner may bring an action in the county of either the vulnerable adult's previous or new residence.

(9) No filing fee may be charged to the petitioner for proceedings under this section. Standard forms and written instructions shall be provided free of charge. [2007 c 312 § 3; 1999 c 176 § 12; 1986 c 187 § 5.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.115 Protection of vulnerable adults—Administrative office of the courts—Standard petition—Order for protection—Standard notice—Court staff handbook. (1) The administrative office of the courts shall develop and prepare standard petition, temporary order for protection, and permanent order for protection forms, a standard notice form to provide notice to the vulnerable adult if the vulnerable adult is not the petitioner, instructions, and a court staff handbook on the protection order process. The standard petition and order for protection forms must be used after October 1, 2007, for all petitions filed and orders issued under this chapter. The administrative office of the courts, in preparing the instructions, forms, notice, and handbook, may consult with attorneys from the elder law section of the Washington state bar association, judges, the department, the Washington protection and advocacy system, and law enforcement personnel.

(a) The instructions shall be designed to assist petitioners in completing the petition, and shall include a sample of the standard petition and order for protection forms.

(b) The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order.

(c) The standard notice form shall be designed to explain to the vulnerable adult in clear, plain language the purpose and nature of the petition and that the vulnerable adult has the right to participate in the hearing and to either support or object to the petition.

(2) The administrative office of the courts shall distribute a master copy of the standard forms, instructions, and court staff handbook to all court clerks and shall distribute a master copy of the standard forms to all superior, district, and municipal courts.

(3) The administrative office of the courts shall determine the significant non-English-speaking or limited-English-speaking populations in the state. The administrator shall then arrange for translation of the instructions required by this section, which shall contain a sample of the standard forms, into the languages spoken by those significant non-English-speaking populations, and shall distribute a master copy of the translated instructions to all court clerks by December 31, 2007.

(4) The administrative office of the courts shall update the instructions, standard forms, and court staff handbook when changes in the law make an update necessary. The updates may be made in consultation with the persons and entities specified in subsection (1) of this section.

(5) For purposes of this section, "court clerks" means court administrators in courts of limited jurisdiction and elected court clerks. [2007 c 312 § 4.]

74.34.120 Protection of vulnerable adults—Hearing. (1) The court shall order a hearing on a petition under RCW 74.34.110 not later than fourteen days from the date of filing the petition.

(2) Personal service shall be made upon the respondent not less than six court days before the hearing. When good faith attempts to personally serve the respondent have been unsuccessful, the court shall permit service by mail or by publication.

(3) When a petition under RCW 74.34.110 is filed by someone other than the vulnerable adult, notice of the petition and hearing must be personally served upon the vulnerable adult not less than six court days before the hearing. In addition to copies of all pleadings filed by the petitioner, the petitioner shall provide a written notice to the vulnerable adult using the standard notice form developed under RCW 74.34.115. When good faith attempts to personally serve the vulnerable adult have been unsuccessful, the court shall permit service by mail, or by publication if the court determines that personal service and service by mail cannot be obtained.

(4) If timely service under subsections (2) and (3) of this section cannot be made, the court shall continue the hearing date until the substitute service approved by the court has been satisfied.

(5)(a) A petitioner may move for temporary relief under chapter 7.40 RCW. The court may continue any temporary order for protection granted under chapter 7.40 RCW until the hearing on a petition under RCW 74.34.110 is held.

(b) Written notice of the request for temporary relief must be provided to the respondent, and to the vulnerable adult if someone other than the vulnerable adult filed the petition. A temporary protection order may be granted without written notice to the respondent and vulnerable adult if it clearly appears from specific facts shown by affidavit or declaration that immediate and irreparable injury, loss, or damage would result to the vulnerable adult before the respondent and vulnerable adult can be served and heard, or that show the respondent and vulnerable adult cannot be served with notice, the efforts made to serve them, and the reasons why prior notice should not be required. [2007 c 312 § 5; 1986 c 187 § 6.]

74.34.130 Protection of vulnerable adults—Judicial relief. The court may order relief as it deems necessary for the protection of the vulnerable adult, including, but not limited to the following:

(1) Restraining respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against the vulnerable adult;

(2) Excluding the respondent from the vulnerable adult's residence for a specified period or until further order of the court;

(3) Prohibiting contact with the vulnerable adult by respondent for a specified period or until further order of the court;

(4) Prohibiting the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(5) Requiring an accounting by respondent of the disposition of the vulnerable adult's income or other resources;

(6) Restraining the transfer of the respondent's and/or vulnerable adult's property for a specified period not exceeding ninety days; and

(7) Requiring the respondent to pay a filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee.

Any relief granted by an order for protection, other than a judgment for costs, shall be for a fixed period not to exceed five years. The clerk of the court shall enter any order for protection issued under this section into the judicial information system. [2007 c 312 § 6. Prior: 2000 c 119 § 27; 2000 c 51 § 2; 1999 c 176 § 13; 1986 c 187 § 7.]

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

74.34.135 Protection of vulnerable adults—Filings by others—Dismissal of petition or order—Testimony or evidence—Additional evidentiary hearings—Temporary order. (1) When a petition for protection under RCW 74.34.110 is filed by someone other than the vulnerable adult or the vulnerable adult's full guardian over either the person or the estate, or both, and the vulnerable adult for whom protection is sought advises the court at the hearing that he or she does not want all or part of the protection sought in the petition, then the court may dismiss the petition or the provisions that the vulnerable adult objects to and any protection order issued under RCW 74.34.120 or 74.34.130, or the court may take additional testimony or evidence, or order additional evidentiary hearings to determine whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order. If an additional evidentiary hearing is ordered and the court determines that there is reason to believe that there is a genuine issue about whether the vulnerable adult is unable to protect his or her person or estate in connection with the issues raised in the petition or order, the court may issue a temporary order for protection of the vulnerable adult pending a decision after the evidentiary hearing.

(2) An evidentiary hearing on the issue of whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order, shall be held within fourteen days of entry of the temporary order for protection under subsection (1) of this section. If the court did not enter a temporary order for protection, the evidentiary hearing shall be held within fourteen days of the prior hearing on the petition. Notice of the time and place of the evidentiary hearing shall be personally served upon the vulnerable adult and the respondent not less than six court days before the hearing. When good faith attempts to personally serve the vulnerable adult and the respondent have been unsuccessful, the court shall permit service by mail, or by publication if the court determines that personal service and service by mail cannot be obtained. If timely service cannot be made, the court may set a new hearing date. A hearing under this subsection is not necessary if the vulnerable adult has been determined to be fully incapacitated over either the person or the estate, or both, under the guardianship laws, *chapter 11.88 RCW. If a hearing is scheduled under this subsection, the protection order shall remain in effect pending the court's decision at the subsequent hearing.

(3) At the hearing scheduled by the court, the court shall give the vulnerable adult, the respondent, the petitioner, and in the court's discretion other interested persons, the opportunity to testify and submit relevant evidence.

(4) If the court determines that the vulnerable adult is capable of protecting his or her person or estate in connection with the issues raised in the petition, and the individual continues to object to the protection order, the court shall dismiss the order or may modify the order if agreed to by the vulnerable adult. If the court determines that the vulnerable adult is not capable of protecting his or her person or estate in connection with the issues raised in the petition or order, and that the individual continues to need protection, the court shall order relief consistent with RCW 74.34.130 as it deems necessary for the protection of the vulnerable adult. In the entry of any order that is inconsistent with the expressed wishes of the vulnerable adult, the court's order shall be governed by the legislative findings contained in RCW 74.34.005. [2007 c 312 § 9.]

***Reviser's note:** Chapter 11.88 RCW was repealed in its entirety by 2019 c 437 § 801, effective January 1, 2021.

74.34.140 Protection of vulnerable adults—Execution of protective order. When an order for protection under RCW 74.34.130 is issued upon request of the petitioner, the court may order a peace officer to assist in the execution of the order of protection. A public agency may not charge a fee for service of process to petitioners seeking relief under this chapter. Petitioners must be provided the necessary number of certified copies at no cost. [2012 c 156 § 2; 1986 c 187 § 8.]

74.34.145 Protection of vulnerable adults—Notice of criminal penalties for violation—Enforcement under RCW 26.50.110. (1) An order for protection of a vulnerable adult issued under this chapter which restrains the respondent or another person from committing acts of abuse, prohibits contact with the vulnerable adult, excludes the person from any specified location, or prohibits the person from coming within a specified distance from a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER

26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(2) Whenever an order for protection of a vulnerable adult is issued under this chapter, and the respondent or person to be restrained knows of the order, a violation of a provision restraining the person from committing acts of abuse, prohibiting contact with the vulnerable adult, excluding the person from any specified location, or prohibiting the person from coming within a specified distance of a location, shall be punishable under RCW 26.50.110, regardless of whether the person is a family or household member as defined in RCW 26.50.010. [2007 c 312 § 7; 2000 c 119 § 2.]

Additional notes found at www.leg.wa.gov

74.34.150 Protection of vulnerable adults—Department may seek relief. The department of social and health services, in its discretion, may seek relief under RCW 74.34.110 through 74.34.140 on behalf of and with the consent of any vulnerable adult. When the department has reason to believe a vulnerable adult lacks the ability or capacity to consent, the department, in its discretion, may seek relief under RCW 74.34.110 through 74.34.140 on behalf of the vulnerable adult. Neither the department of social and health services nor the state of Washington shall be liable for seeking or failing to seek relief on behalf of any persons under this section. [2007 c 312 § 8; 1986 c 187 § 9.]

74.34.160 Protection of vulnerable adults—Proceedings are supplemental. Any proceeding under RCW 74.34.110 through 74.34.150 is in addition to any other civil or criminal remedies. [1986 c 187 § 11.]

74.34.163 Application to modify or vacate order. Any vulnerable adult who has not been adjudicated fully incapacitated under *chapter 11.88 RCW, or the vulnerable adult's guardian, at any time subsequent to entry of a permanent protection order under this chapter, may apply to the court for an order to modify or vacate the order. In a hearing on an application to dismiss or modify the protection order, the court shall grant such relief consistent with RCW 74.34.110 as it deems necessary for the protection of the vulnerable adult, including dismissal or modification of the protection order. [2007 c 312 § 10.]

***Reviser's note:** Chapter 11.88 RCW was repealed in its entirety by 2019 c 437 § 801, effective January 1, 2021.

74.34.165 Rules. The department may adopt rules relating to the reporting, investigation, and provision of protective services in in-home settings, consistent with the objectives of this chapter. [1999 c 176 § 18.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.170 Services of department discretionary—Funding. The provision of services under RCW *74.34.030, 74.34.040, 74.34.050, and **74.34.100 through 74.34.160 are discretionary and the department shall not be required to expend additional funds beyond those appropriated. [1986 c 187 § 10.]

Reviser's note: *(1) RCW 74.34.030 was repealed by 1999 c 176 § 35.

**(2) RCW 74.34.100 was recodified as RCW 74.34.015 pursuant to 1995 1st sp.s. c 18 § 89, effective July 1, 1995. RCW 74.34.015 was subsequently repealed by 1999 c 176 § 35.

74.34.180 Retaliation against whistleblowers and residents—Remedies—Rules. (1) An employee or contractor 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 or the department of health about suspected abandonment, abuse, financial exploitation, or neglect by any person in a facility, licensed or required to be licensed, or care provided in a facility or in a home setting, by any person associated with a hospice, home care, or home health agency licensed under chapter 70.127 RCW or other in-home provider, 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 expel a resident from a facility, or any type of discriminatory treatment of a resident who is a consumer of hospice, home health, home care services, or other in-home services by whom, or upon whose behalf, a complaint substantiated by the department or the department of health has been submitted to the department or the department of health 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 review conducted by the department that shows that the resident or consumer'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 a person with a mandatory duty to report under this chapter, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, or the department of health, 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. The protections provided to whistleblowers under this chapter shall not prevent a facility or an agency licensed under chapter 70.127 RCW from: (i) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (ii) for facilities licensed under

chapter 70.128 RCW, 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 in which a whistleblower has been terminated or had hours of employment reduced because of the inability of a facility to meet payroll; 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 facility or an agency licensed under chapter 70.127 RCW from exercising its authority to terminate, suspend, or discipline any employee who engages in workplace reprisal or retaliatory action against a whistleblower.

(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)(a) Any vulnerable adult 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 may not for that reason alone be considered abandoned, abused, or neglected.

(b) Any vulnerable adult may not be considered abandoned, abused, or neglected under this chapter by any health care provider, facility, facility employee, agency, agency employee, or individual provider who participates in good faith in the withholding or withdrawing of life-sustaining treatment from a vulnerable adult under chapter 70.122 RCW, or who acts in accordance with chapter 7.70 RCW or other state laws to withhold or withdraw treatment, goods, or services.

(7) The department, and the department of health for facilities, agencies, or individuals it regulates, shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes. [1999 c 176 § 14; 1997 c 392 § 202.]

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.

74.34.200 Abandonment, abuse, financial exploitation, or neglect of a vulnerable adult—Cause of action for damages—Legislative intent. (1) In addition to other remedies available under the law, a vulnerable adult who has been subjected to abandonment, abuse, financial exploitation, or neglect either while residing in a facility or in the case of a person residing at home who receives care from a home health, hospice, or home care agency, or an individual provider, shall have a cause of action for damages on account of his or her injuries, pain and suffering, and loss of property sustained thereby. This action shall be available where the defendant is or was a corporation, trust, unincorporated association, partnership, administrator, employee, agent, officer, partner, or director of a facility, or of a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW, as now or subsequently designated, or an individual provider.

(2) It is the intent of the legislature, however, that where there is a dispute about the care or treatment of a vulnerable adult, the parties should use the least formal means available to try to resolve the dispute. Where feasible, parties are encouraged but not mandated to employ direct discussion with the health care provider, use of the long-term care ombuds or other intermediaries, and, when necessary, recourse through licensing or other regulatory authorities.

(3) In an action brought under this section, a prevailing plaintiff shall be awarded his or her actual damages, together with the costs of the suit, including a reasonable attorneys' fee. The term "costs" includes, but is not limited to, the reasonable fees for a guardian, guardian ad litem, and experts, if any, that may be necessary to the litigation of a claim brought under this section. [2013 c 23 § 219; 1999 c 176 § 15; 1995 1st sp.s. c 18 § 85.]

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

74.34.205 Abandonment, abuse, or neglect—Exceptions. (1) Any vulnerable adult 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 may not for that reason alone be considered abandoned, abused, or neglected.

(2) Any vulnerable adult may not be considered abandoned, abused, or neglected under this chapter by any health care provider, facility, facility employee, agency, agency employee, or individual provider who participates in good faith in the withholding or withdrawing of life-sustaining treatment from a vulnerable adult under chapter 70.122 RCW, or who acts in accordance with chapter 7.70 RCW or other state laws to withhold or withdraw treatment, goods, or services. [1999 c 176 § 16.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.210 Order for protection or action for damages—Standing—Jurisdiction. A petition for an order for protection may be brought by the vulnerable adult, the vulnerable adult's guardian or legal fiduciary, the department, or any interested person as defined in RCW 74.34.020. An action for damages under this chapter may be brought by the vulnerable adult, or where necessary, by his or her family members and/or guardian or legal fiduciary. The death of the vulnerable adult shall not deprive the court of jurisdiction over a petition or claim brought under this chapter. Upon petition, after the death of the vulnerable adult, the right to initiate or maintain the action shall be transferred to the executor or administrator of the deceased, for recovery of all damages for the benefit of the deceased person's beneficiaries set forth in chapter 4.20 RCW or if there are no beneficiaries, then for recovery of all economic losses sustained by the deceased person's estate. [2007 c 312 § 11; 1995 1st sp.s. c 18 § 86.]

Additional notes found at www.leg.wa.gov

74.34.215 Financial exploitation of vulnerable adults. (1) Pending an investigation by the financial institution, the department, or law enforcement, if a financial institution reasonably believes that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted, the financial institution may, but is not required to, refuse a transaction requiring disbursal of funds contained in the account:

(a) Of the vulnerable adult;

(b) On which the vulnerable adult is a beneficiary, including a trust or guardianship account; or

(c) Of a person suspected of perpetrating financial exploitation of a vulnerable adult.

(2) A financial institution may also refuse to disburse funds under this section if the department, law enforcement, or the prosecuting attorney's office provides information to the financial institution demonstrating that it is reasonable to believe that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted.

(3) A financial institution is not required to refuse to disburse funds when provided with information alleging that financial exploitation may have occurred, may have been attempted, or is being attempted, but may use its discretion to determine whether or not to refuse to disburse funds based on the information available to the financial institution.

(4) A financial institution that refuses to disburse funds based on a reasonable belief that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted shall:

(a) Make a reasonable effort to notify all parties authorized to transact business on the account orally or in writing; and

(b) Report the incident to the adult protective services division of the department and local law enforcement.

(5) Any refusal to disburse funds as authorized by this section based on the reasonable belief of a financial institution that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted will expire upon the sooner of:

(a) Ten business days after the date on which the financial institution first refused to disburse the funds if the transaction involved the sale of a security or offer to sell a security, as defined in RCW 21.20.005, unless sooner terminated by an order of a court of competent jurisdiction;

(b) Five business days after the date on which the financial institution first refused to disburse the funds if the transaction did not involve the sale of a security or offer to sell a security, as defined in RCW 21.20.005, unless sooner terminated by an order of a court of competent jurisdiction; or

(c) The time when the financial institution is satisfied that the disbursement will not result in financial exploitation of a vulnerable adult.

(6) A court of competent jurisdiction may enter an order extending the refusal by the financial institution to disburse funds based on a reasonable belief that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted. A court of competent jurisdiction may also order other protective relief as authorized by RCW 7.40.010 and 74.34.130.

(7) A financial institution or an employee of a financial institution is immune from criminal, civil, and administrative liability for refusing to disburse funds or disbursing funds under this section and for actions taken in furtherance of that determination if the determination of whether or not to disburse funds was made in good faith. [2010 c 133 § 3.]

74.34.220 Financial exploitation of vulnerable adults—Training—Reporting. (1) A financial institution shall provide training concerning the financial exploitation of vulnerable adults to the employees specified in subsection (2) of this section within one year of June 10, 2010, and shall thereafter provide such training to the new employees specified in subsection (2) of this section within the first three months of their employment.

(2) A financial institution that is a broker-dealer or investment adviser as defined in RCW 21.20.005 shall provide training concerning the financial exploitation of vulnerable adults to employees who are required to be registered in the state of Washington as salespersons or investment adviser representatives under RCW 21.20.040 and who have contact with customers and access to account information on a regular basis and as part of their job. All other financial institutions shall provide training concerning the financial exploitation of vulnerable adults to employees who have contact with customers and access to account information on a regular basis and as part of their job.

(3) The training must include recognition of indicators of financial exploitation of a vulnerable adult, the manner in which employees may report suspected financial exploitation to the department and law enforcement as permissive reporters, and steps employees may take to prevent suspected financial exploitation of a vulnerable adult as authorized by law or agreements between the financial institution and customers of the financial institution. The office of the attorney general and the department shall develop a standardized training that financial institutions may offer, or the financial institution may develop its own training.

(4) A financial institution may provide access to or copies of records that are relevant to suspected financial exploitation or attempted financial exploitation of a vulnerable adult to the department, law enforcement, or the prosecuting attorney's office, either as part of a referral to the department, law enforcement, or the prosecuting attorney's office, or upon request of the department, law enforcement, or the prosecuting attorney's office pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation.

(5) A financial institution or employee of a financial institution participating in good faith in making a report or providing documentation or access to information to the department, law enforcement, or the prosecuting attorney's office under this chapter shall be immune from criminal, civil, or administrative liability. [2010 c 133 § 5.]

74.34.300 Vulnerable adult fatality reviews. (1) The department shall conduct a vulnerable adult fatality review in the event of a death of a vulnerable adult when the department has reason to believe that the death of the vulnerable adult may be related to the abuse, abandonment, exploitation,

or neglect of the vulnerable adult, or may be related to the vulnerable adult's self-neglect, and the vulnerable adult was:

(a) Receiving home and community-based services in his or her own home or licensed or certified settings, described under chapters 74.39, 74.39A, 18.20, 70.128, and 71A.12 RCW, within sixty days preceding his or her death; or

(b) Living in his or her own home or licensed or certified settings described under chapters 74.39, 74.39A, 18.20, 70.128, and 71A.12 RCW and was the subject of a report under this chapter received by the department within twelve months preceding his or her death.

(2) When conducting a vulnerable adult fatality review of a person who had been receiving hospice care services before the person's death, the review shall provide particular consideration to the similarities between the signs and symptoms of abuse and those of many patients receiving hospice care services.

(3) All files, reports, records, communications, and working papers used or developed for purposes of a fatality review are confidential and not subject to disclosure pursuant to RCW 74.34.095.

(4) The department may adopt rules to implement this section. [2016 c 172 § 4; 2008 c 146 § 10.]

Finding—2016 c 172: See note following RCW 43.382.005.

Findings—Intent—Severability—2008 c 146: See notes following RCW 74.41.040.

74.34.305 Statement to vulnerable adults. (1) When the department opens an investigation of a report of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult, the department shall, at the time of the interview of the vulnerable adult who is an alleged victim, provide a written statement of the rights afforded under this chapter and other applicable law to alleged victims or legal guardians. This statement must include the department's name, address, and telephone number and may include other appropriate referrals. The statement must be substantially in the following form:

"You are entitled to be free from abandonment, abuse, financial exploitation, and neglect. If there is a reason to believe that you have experienced abandonment, abuse, financial exploitation, or neglect, you have the right to:

(a) Make a report to the department of social and health services and law enforcement and share any information you believe could be relevant to the investigation, and identify any persons you believe could have relevant information.

(b) Be free from retaliation for reporting or causing a report of abandonment, abuse, financial exploitation, or neglect.

(c) Be treated with dignity and addressed with respectful language.

(d) Reasonable accommodation for your disability when reporting, and during investigations and administrative proceedings.

(e) Request an order that prohibits anyone who has abandoned, abused, financially exploited, or neglected you from remaining in your home, having contact with you, or accessing your money or property.

(f) Receive from the department of social and health services information and appropriate referrals to other agencies that can advocate, investigate, or take action.

(g) Be informed of the status of investigations, proceedings, court actions, and outcomes by the agency that is handling any case in which you are a victim.

(h) Request referrals for advocacy or legal assistance to help with safety planning, investigations, and hearings.

(i) Complain to the department of social and health services, formally or informally, about investigations or proceedings, and receive a prompt response."

(2) This section shall not be construed to create any new cause of action or limit any existing remedy. [2011 c 170 § 3.]

74.34.310 Service of process or filing fees prohibited—Certified copies. A public agency may not charge a fee for filing or service of process to petitioners seeking relief under this chapter. Petitioners must be provided the necessary number of certified copies at no cost. [2012 c 156 § 1.]

74.34.320 Written protocol—Counties encouraged to develop for handling criminal cases involving vulnerable adults—Vulnerable adult advocacy teams—Confidentiality—Disclosure of information. (1) Each county is encouraged to develop a written protocol for handling criminal cases involving vulnerable adults. The protocol shall:

(a) Address the coordination of vulnerable adult mistreatment investigations among the following groups as appropriate and when available: The prosecutor's office; law enforcement; adult protective services; vulnerable adult advocacy centers; local advocacy groups; community victim advocacy programs; professional guardians; medical examiners or coroners; financial analysts or forensic accountants; social workers with experience or training related to the mistreatment of vulnerable adults; medical personnel; the state long-term care ombuds or a regional long-term care ombuds specifically designated by the state long-term care ombuds; developmental disabilities ombuds; the attorney general's office; and any other local agency involved in the criminal investigation of vulnerable adult mistreatment;

(b) Be developed by the prosecuting attorney with the assistance of the agencies referenced in this subsection;

(c) Provide that participation as a member of the vulnerable adult advocacy team is voluntary;

(d) Include a brief statement provided by the state long-term care ombuds, without alteration, that describes the confidentiality laws and policies governing the state long-term care ombuds program, and includes citations to relevant federal and state laws;

(e) Require the development and use of a confidentiality agreement, in compliance with this section, that includes, but is not limited to, terms governing the type of information that must be shared, and the means by which it is shared; the existing confidentiality obligations of team members; and the circumstances under which team members may disclose information outside of the team;

(f) Require the vulnerable adult advocacy team to make a good faith effort to obtain the participation of the state long-term care ombuds prior to addressing any issue related to

abuse, neglect, or financial exploitation of a vulnerable adult residing in a long-term care facility during the relevant time period.

(2) Members of a vulnerable adult advocacy team must disclose to each other confidential or sensitive information and records, if the team member disclosing the information or records reasonably believes the disclosure is relevant to the duties of the vulnerable adult advocacy team. The disclosure and receipt of confidential information between vulnerable adult advocacy team members shall be governed by the requirements of this section, and by the county protocol developed pursuant to this section.

(3) Prior to participation, each member of the vulnerable adult advocacy team must sign a confidentiality agreement that requires compliance with all governing federal and state confidentiality laws.

(4) The information or records obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(5) Information and records communicated or provided to vulnerable adult advocacy team members, as well as information and records created in the course of an investigation, shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law protections. The disclosed information may not be further disclosed except by law or by court order. [2017 c 266 § 13.]

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

74.34.902 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 § 181.]

Chapter 74.36 RCW

FUNDING FOR COMMUNITY PROGRAMS FOR THE AGING

Sections

State council on aging: RCW 43.20A.680.

74.36.100 Department to participate in and administer Federal Older Americans Act of 1965. The department of social and health services is authorized to take advantage of and participate in the Federal Older Americans Act of 1965 (Public Law 89-73, 89th Congress, 79 Stat. 220) and to accept, administer and disburse any federal funds that may be available under said act. [1970 ex.s. c 18 § 27; 1967 ex.s. c 33 § 1.]

Additional notes found at www.leg.wa.gov

74.36.110 Community programs and projects for the aging—Allotments for—Purpose. The secretary of the department of social and health services or his or her designee is authorized to allot for such purposes all or a portion of whatever state funds the legislature appropriates or are otherwise made available for the purpose of matching local funds dedicated to community programs and projects for the aging. The purpose of RCW 74.36.110 through 74.36.130 is to stimulate and assist local communities to obtain federal funds made available under the federal older Americans act of 1965 as amended. [2013 c 23 § 222; 1971 ex.s. c 169 § 10.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.36.120 Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval. (1) The secretary or his or her designee shall adopt and set forth standards for determining the eligibility and approval of community projects and priorities therefor, and shall have final authority to approve or deny such projects and funding requested under RCW 74.36.110 through 74.36.130.

(2) Only community project proposals submitted by local public agencies, by private nonprofit agencies or organizations, or by public or other nonprofit institutions of higher education, shall be eligible for approval.

(3) Any community project applicant whose application for approval is denied will be afforded an opportunity for an informal hearing before the secretary or his or her designee, but the administrative procedure act, chapter 34.05 RCW, shall not apply. [2013 c 23 § 223; 1971 ex.s. c 169 § 11.]

74.36.130 Community programs and projects for the aging—State funding, limitations—Payments, type. (1) State funds made available under RCW 74.36.110 through 74.36.130 for any project shall not exceed fifty per centum of the nonfederal share of the costs. To the extent that federal law permits, and the secretary or his or her designee deems appropriate, the local community share and/or the state share may be in the form of cash or in-kind resources.

(2) Payments made under RCW 74.36.110 through 74.36.130 may be made in advance or by way of reimbursement, and in such installments and on such conditions as the secretary or his or her designee may determine, including provisions for adequate accounting systems, reasonable record retention periods, and financial audits. [2013 c 23 § 224; 1971 ex.s. c 169 § 12.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

Chapter 74.38 RCW
SENIOR CITIZENS SERVICES ACT

Sections

74.38.010 Legislative recognition—Public policy. The legislature recognizes the need for the development and expansion of alternative services and forms of care for senior citizens. Such services should be designed to restore individuals to, or maintain them at, the level of independent living they are capable of attaining. These alternative services and forms of care should be designed to both complement the present forms of institutional care and create a system whereby appropriate services can be rendered according to the care needs of an individual. The provision of service should continue until the client is able to function independently, moves to an institution, moves from the state, dies, or withdraws from the program.

Therefore, it shall be the policy of this state to develop, expand, or maintain those programs which provide an alternative to institutional care when that form of care is premature, unnecessary, or inappropriate. [1977 ex.s. c 321 § 1; 1975-'76 2nd ex.s. c 131 § 1.]

74.38.020 Definitions. As used in this chapter, the following words and phrases shall have the following meaning unless the content clearly requires otherwise:

(1) "Area agency" means an agency, other than a state agency, designated by the department to carry out programs or services approved by the department in a designated geographical area of the state.

(2) "Area plan" means the document submitted annually by an area agency to the department for approval which sets forth (a) goals and measurable objectives, (b) review of past expenditures and accounting of revenue for the previous year, (c) estimated revenue and expenditures for the ensuing year, and (d) the planning, coordination, administration, social services, and evaluation activities to be undertaken to carry out the purposes of the Older Americans Act of 1965 (42 U.S.C. Sec. 3024 et seq.), as now or hereafter amended.

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

(4) "Office" shall mean the office on aging which is the organizational unit within the department responsible for coordinating and administering aging problems.

(5) "Eligible persons" means senior citizens who are:

(a) Sixty-five years of age or more; or

(b) Sixty years of age or more and are either (i) nonemployed, or (ii) employed for twenty hours per week or less; and

(c) In need of services to enable them to remain in their customary homes because of physical, mental, or other debilitating impairments.

(6) "Low income" means initial resources or subsequent income at or below forty percent of the state median income as promulgated by the secretary of the United States department of health, education and welfare for Title XX of the Social Security Act, or, in the alternative, a level determined by the department and approved by the legislature.

(7) "Income" shall have the same meaning as in chapter 74.04 RCW, as now or hereafter amended; except, that money received from RCW 74.38.060 shall be excluded from this definition.

(8) "Resource" shall have the same meaning as in chapter 74.04 RCW, as now or hereafter amended.

(9) "Need" shall have the same meaning as in chapter 74.04 RCW, as now or hereafter amended. [1989 1st ex.s. c 9 § 817; 1977 ex.s. c 321 § 2; 1975-'76 2nd ex.s. c 131 § 2.]

Additional notes found at www.leg.wa.gov

74.38.030 Administration of community-based services program—Area plans—Annual state plan—Determination of low-income eligible persons. (1) The program of community-based services authorized under this chapter shall be administered by the department. Such services may be provided by the department or through purchase of service contracts, vendor payments or direct client grants.

The department shall, under stipend or grant programs provided under RCW 74.38.060, utilize, to the maximum staffing level possible, eligible persons in its administration, supervision, and operation.

(2) The department shall be responsible for planning, coordination, monitoring and evaluation of services provided under this chapter but shall avoid duplication of services.

(3) The department may designate area agencies in cities of not less than twenty thousand population or in regional areas within the state. These agencies shall submit area plans, as required by the department. For area plans prepared for submission in 2009, and thereafter, the area agencies may include the findings and recommendations of area-wide planning initiatives that they may undertake with appropriate local and regional partners regarding the changing age demographics of their area and the implications of this demographic change for public policies and public services. They shall also submit, in the manner prescribed by the department, such other program or fiscal data as may be required.

(4) The department shall develop an annual state plan pursuant to the Older Americans Act of 1965, as now or hereafter amended. This plan shall include, but not be limited to:

(a) Area agencies' programs and services approved by the department;

(b) Other programs and services authorized by the department; and

(c) Coordination of all programs and services.

(5) The department shall establish rules and regulations for the determination of low-income eligible persons. Such determination shall be related to need based on the initial resources and subsequent income of the person entering into a program or service. This determination shall not prevent the eligible person from utilizing a program or service provided by the department or area agency. However, if the determina-

tion is that such eligible person is nonlow income, the provision of RCW 74.38.050 shall be applied as of the date of such determination. [2008 c 146 § 5; 1975-'76 2nd ex.s. c 131 § 3.]

Findings—Intent—Severability—2008 c 146: See notes following RCW 74.41.040.

74.38.040 Scope and extent of community based services program. The community based services for low-income eligible persons provided by the department or the respective area agencies may include:

(1) Access services designed to provide identification of eligible persons, assessment of individual needs, reference to the appropriate service, and follow-up service where required. These services shall include information and referral, outreach, transportation, and counseling;

(2) Day care offered on a regular, recurrent basis. General nursing, rehabilitation, personal care, nutritional services, social casework, mental health as provided pursuant to chapter 71.24 RCW, and/or limited transportation services may be made available within this program;

(3) In-home care for persons, including basic health care; performance of various household tasks and other necessary chores, or, a combination of these services;

(4) Counseling on death for the terminally ill and care and attendance at the time of death; except, that this is not to include reimbursement for the use of life-sustaining mechanisms;

(5) Health services which will identify health needs and which are designed to avoid institutionalization; assist in securing admission to medical institutions or other health related facilities when required; and, assist in obtaining health services from public or private agencies or providers of health services. These services shall include health screening and evaluation, in-home services, health education, and such health appliances which will further the independence and well-being of the person;

(6) The provision of low-cost, nutritionally sound meals in central locations or in the person's home in the instance of incapacity. Also, supportive services may be provided in nutritional education, shopping assistance, diet counseling, and other services to sustain the nutritional well-being of these persons;

(7) The provisions of services to maintain a person's home in a state of adequate repair, insofar as is possible, for their safety and comfort. These services shall be limited, but may include housing counseling, minor repair and maintenance, and moving assistance when such repair will not attain standards of health and safety, as determined by the department;

(8) Civil legal services, as limited by RCW 2.50.100, for counseling and representation in the areas of housing, consumer protection, public entitlements, property, and related fields of law;

(9) Long-term care ombuds programs for residents of all long-term care facilities. [2013 c 23 § 225; 1983 c 290 § 14; 1977 ex.s. c 321 § 3; 1975-'76 2nd ex.s. c 131 § 4.]

74.38.050 Availability of services for persons other than those of low income—Utilization of volunteers and public assistance recipients—Private agencies—Well-adult clinics—Fee schedule, exceptions. The services provided in RCW 74.38.040 may be provided to nonlow-income eligible persons: PROVIDED, That the department and the area agencies on aging shall utilize volunteer workers and public assistant recipients to the maximum extent possible to provide the services provided in RCW 74.38.040: PROVIDED, FURTHER, That the department and the area agencies shall utilize the bid procedure pursuant to chapter 43.19 RCW for providing such services to low-income and nonlow-income persons whenever the services to be provided are available through private agencies at a cost savings to the department. The department shall establish a fee schedule based on the ability to pay and graduated to full recovery of the cost of the service provided; except, that nutritional services, health screening, services under the long-term care ombuds program under chapter 43.190 RCW, and access services provided in RCW 74.38.040 shall not be based on need and no fee shall be charged; except further, notwithstanding any other provision of this chapter, that well-adult clinic services may be provided in lieu of health screening services if such clinics use the fee schedule established by this section. [2013 c 23 § 226; 1983 c 290 § 15; 1979 ex.s. c 147 § 1; 1977 ex.s. c 321 § 4; 1975-'76 2nd ex.s. c 131 § 5.]

Additional notes found at www.leg.wa.gov

74.38.060 Expansion of federal programs authorized. The department may expand the foster grandparent, senior companion and retired senior volunteer programs funded under the Federal Volunteer Agency (ACTION) (P.L. 93-113 Title II), or its successor agency, which provide senior citizens with volunteer stipends, out-of-pocket expenses, or wages to perform services in the community. [1975-'76 2nd ex.s. c 131 § 6.]

RSVP funding: RCW 43.63A.275.

74.38.061 Expansion of federal programs authorized. The department may expand the foster grandparent, senior companion, and retired senior volunteer programs funded under the Federal Volunteer Agency (ACTION) (P.L. 93-113 Title II), or its successor agency, which provide senior citizens with volunteer stipends, out-of-pocket expenses, or wages to perform services in the community. [1977 ex.s. c 321 § 5.]

74.38.070 Reduced utility rates for low-income senior citizens and other low-income citizens. Notwithstanding any other provision of law, any county, city, town, public utility district or other municipal corporation, or quasi municipal corporation providing utility services may provide such services at reduced rates for low-income senior citizens or other low-income citizens: PROVIDED, That, for the purposes of this section, "low-income senior citizen" or "other low-income citizen" shall be defined by appropriate ordinance or resolution adopted by the governing body of the county, city, town, public utility district or other municipal corporation, or quasi municipal corporation providing the utility services. Any reduction in rates granted in whatever manner to low-income senior citizens or other low-income citizens in one part of a service area shall be uniformly extended to low-income senior citizens or other low-income citizens in all other parts of the service area. [2002 c 270 § 1;

1998 c 300 § 8; 1990 c 164 § 1; 1988 c 44 § 1; 1980 c 160 § 1; 1979 c 116 § 1.]

Findings—Intent—1998 c 300: See RCW 19.29A.005.

Additional notes found at www.leg.wa.gov

74.38.900 Short title. Sections 1 through 6 of this act shall be known and may be cited as the "Senior Citizens Services Act". [1975-'76 2nd ex.s. c 131 § 7.]

Chapter 74.39 RCW
LONG-TERM CARE SERVICE OPTIONS

Sections

74.39.001 Finding. The legislature finds that:

Washington's chronically functionally disabled population is growing at a rapid pace. This growth, along with economic and social changes and the coming age wave, presents opportunities for the development of long-term care community services networks and enhanced volunteer participation in those networks, and creates a need for different approaches to currently fragmented long-term care programs. The legislature further recognizes that persons with functional disabilities should receive long-term care services that encourage individual dignity, autonomy, and development of their fullest human potential. [1989 c 427 § 1.]

74.39.005 Purpose. The purpose of this chapter is to:

(1) Establish a balanced range of health, social, and supportive services that deliver long-term care services to chronically, functionally disabled persons of all ages;

(2) Ensure that functional ability shall be the determining factor in defining long-term care service needs and that these needs will be determined by a uniform system for comprehensively assessing functional disability;

(3) Ensure that services are provided in the most independent living situation consistent with individual needs;

(4) Ensure that long-term care service options shall be developed and made available that enable functionally disabled persons to continue to live in their homes or other community residential facilities while in the care of their families or other volunteer support persons;

(5) Ensure that long-term care services are coordinated in a way that minimizes administrative cost, eliminates unnecessarily complex organization, minimizes program and service duplication, and maximizes the use of financial resources in directly meeting the needs of persons with functional limitations;

(6) Develop a systematic plan for the coordination, planning, budgeting, and administration of long-term care services now fragmented between the division of developmental disabilities, division of mental health, aging and adult services administration, division of children and family services, division of vocational rehabilitation, office on AIDS, division of health, and bureau of alcohol and substance abuse;

(7) Encourage the development of a statewide long-term care case management system that effectively coordinates the plan of care and services provided to eligible clients;

(8) Ensure that individuals and organizations affected by or interested in long-term care programs have an opportunity to participate in identification of needs and priorities, policy development, planning, and development, implementation, and monitoring of state supported long-term care programs;

(9) Support educational institutions in Washington state to assist in the procurement of federal support for expanded research and training in long-term care; and

(10) Facilitate the development of a coordinated system of long-term care education that is clearly articulated between all levels of higher education and reflective of both in-home care needs and institutional care needs of functionally disabled persons. [1995 1st sp.s. c 18 § 10; 1989 c 427 § 2.]

Additional notes found at www.leg.wa.gov

74.39.007 Definitions. The definitions in this section apply throughout RCW 74.39.007, 74.39.050, 74.39.060, 74.39.070, 43.190.060, and section 1, chapter 336, Laws of 1999 unless the context clearly requires otherwise.

(1) "Self-directed care" means the process in which an adult person, who is prevented by a functional disability from performing a manual function related to health care that an individual would otherwise perform for himself or herself, chooses to direct and supervise a paid personal aide to perform those tasks.

(2) "Personal aide" means an individual, working privately or as an individual provider under contract or agreement with the department of social and health services, who acts at the direction of an adult person with a functional disability living in his or her own home and provides that person with health care services that a person without a functional disability can perform. [1999 c 336 § 2.]

Finding—Intent—1999 c 336: "(1) The legislature finds that certain aspects of health licensure laws have the unintended consequence of limiting the right of persons with functional disabilities to care for themselves in their own home, and of securing assistance from other persons in performing routine health-related tasks that persons without these disabilities customarily perform.

(2) It is the intent of the legislature to clarify the right of adults with functional disabilities to choose to self-direct their own health-related tasks through personal aides, and to describe the circumstances under which self-directed care may take place in the home setting. The legislature declares that it is in the public interest to preserve the autonomy and dignity of persons with functional disabilities to care for themselves in their own homes, among the continuum of options for health care services where the judgment and control over the care rests with the individual." [1999 c 336 § 1.]

74.39.010 Option—Flexibility—Title XIX of the federal social security act. A valuable option available to Washington state to achieve the goals of RCW 74.39.001 and 74.39.005 is the flexibility in personal care and other long-term care services encouraged by the federal government under Title XIX of the federal social security act. These services include options to expand community-based long-term

care services, such as adult family homes, congregate care facilities, respite, chore services, hospice, and case management. [1989 c 427 § 3.]

74.39.020 Opportunities—Increase of federal funds—Title XIX of the federal social security act. Title XIX of the federal social security act offers valuable opportunities to increase federal funds available to provide community-based long-term care services to functionally disabled persons in their homes, and in noninstitutional residential facilities, such as adult family homes and congregate care facilities. [1989 c 427 § 9.]

74.39.030 Community options program entry system—Waiver—Respite services. The department shall request an amendment to its community options program entry system waiver under section 1905(c) of the federal social security act to include respite services as a service available under the waiver. [1989 c 427 § 11.]

74.39.041 Community residential options—Nursing facility eligible clients. (1) To the extent of available funds and subject to any conditions placed on appropriations for this purpose, the department may provide one or more home and community-based waiver programs in accordance with section 1915(c) of the federal social security act for Washington residents who have a gross income in excess of three hundred percent of the federal supplemental security income benefit level. The waiver services provided in accordance with this section may differ from, and shall operate with a separate limit or limits on total enrollment than, those provided for persons who are categorically needy as defined in Title XIX of the federal social security act. The department shall adopt rules to establish eligibility criteria, applicable income standards, and the specific waiver services to be provided. Total annual enrollment levels and the services to be provided shall be as specified in the waiver agreement or agreements with the federal government, subject to any conditions on appropriations for this purpose.

(2) If a nursing facility resident becomes eligible for home and community-based waiver service alternatives to nursing facility care, but chooses to continue to reside in a nursing facility, the department must allow that choice. However, if the resident is a medicaid recipient, the resident must require a nursing facility level of care.

(3) If a recipient of home and community-based waiver services may continue to receive home and community-based waiver services, despite an otherwise disqualifying level of income, but chooses to seek admission to a nursing facility, the department must allow that choice. However, if the resident is a medicaid recipient, the resident must require a nursing facility level of care.

(4) The department will fully disclose to all individuals eligible for waiver services under this section the services available in different long-term care settings. [2001 c 269 § 2.]

74.39.050 Individuals with functional disabilities—Self-directed care. (1) An adult person with a functional disability living in his or her own home may direct and supervise a paid personal aide in the performance of a health care task.

(2) The following requirements shall guide the provision of self-directed care under chapter 336, Laws of 1999:

(a) Health care tasks are those medical, nursing, or home health services that enable the person to maintain independence, personal hygiene, and safety in his or her own home, and that are services that a person without a functional disability would customarily and personally perform without the assistance of a licensed health care provider.

(b) The individual who chooses to self-direct a health care task is responsible for initiating self-direction by informing the health care professional who has ordered the treatment which involves that task of the individual's intent to perform that task through self-direction.

(c) When state funds are used to pay for self-directed tasks, a description of those tasks will be included in the client's comprehensive assessment, and subject to review with each annual reassessment.

(d) When a licensed health care provider orders treatment involving a health care task to be performed through self-directed care, the responsibility to ascertain that the patient understands the treatment and will be able to follow through on the self-directed care task is the same as it would be for a patient who performs the health care task for himself or herself, and the licensed health care provider incurs no additional liability when ordering a health care task which is to be performed through self-directed care.

(e) The role of the personal aide in self-directed care is limited to performing the physical aspect of health care tasks under the direction of the person for whom the tasks are being done. This shall not affect the ability of a personal aide to provide other home care services, such as personal care or homemaker services, which enable the client to remain at home.

(f) The responsibility to initiate self-directed health care tasks, to possess the necessary knowledge and training for those tasks, and to exercise judgment regarding the manner of their performance rests and remains with the person who has chosen to self-direct those tasks, including the decision to employ and dismiss a personal aide. [1999 c 336 § 3.]

Finding—Intent—1999 c 336: See note following RCW 74.39.007.

74.39.060 Personal aide providers—Registration. Any individual who, for compensation, serves as a personal aide provider under contract or agreement with the department of social and health services, to a person who self-directs his or her own care in his or her own home, shall register with the department of social and health services. [1999 c 336 § 4.]

Finding—Intent—1999 c 336: See note following RCW 74.39.007.

74.39.070 Personal aide—Qualification exemptions. A personal aide, in the performance of a health care task, who is directed and supervised by a person with a functional disability in his or her own home, is exempt from any legal requirement to qualify and be credentialed by the department of health as a health care provider under Title 18 RCW to the extent of the responsibilities provided and health care tasks performed under chapter 336, Laws of 1999. [1999 c 336 § 8.]

Finding—Intent—1999 c 336: See note following RCW 74.39.007.

Chapter 74.39A RCW
LONG-TERM CARE SERVICES OPTIONS—EXPANSION

Sections

74.39A.005 Findings. The legislature finds that the aging of the population and advanced medical technology have resulted in a growing number of persons who require assistance. The primary resource for long-term care continues to be family and friends. However, these traditional caregivers are increasingly employed outside the home. There is a growing demand for improvement and expansion of home and community-based long-term care services to support and complement the services provided by these informal caregivers.

The legislature further finds that the public interest would best be served by a broad array of long-term care services that support persons who need such services at home or in the community whenever practicable and that promote individual autonomy, dignity, and choice.

The legislature finds that as other long-term care options become more available, the relative need for nursing home beds is likely to decline. The legislature recognizes, however, that nursing home care will continue to be a critical part of the state's long-term care options, and that such services should promote individual dignity, autonomy, and a homelike environment.

The legislature finds that many recipients of in-home services are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are often the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and clients' needs increase. The legislature intends that current training standards be enhanced. [2000 c 121 § 9; 1993 c 508 § 1.]

74.39A.007 Purpose and intent. It is the legislature's intent that:

(1) Long-term care services administered by the department of social and health services include a balanced array of health, social, and supportive services that promote individual choice, dignity, and the highest practicable level of independence;

(2) Home and community-based services be developed, expanded, or maintained in order to meet the needs of consumers and to maximize effective use of limited resources;

(3) Long-term care services be responsive and appropriate to individual need and also cost-effective for the state;

(4) Nursing home care is provided in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident and timely discharge to a less restrictive care setting when appropriate; and

(5) State health planning for nursing home bed supply take into account increased availability of other home and community-based service options. [1993 c 508 § 2.]

74.39A.009 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Adult residential care" means services provided by an assisted living facility that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living facility" means a facility licensed under chapter 18.20 RCW.

(4) "Assisted living services" means services provided by an assisted living facility that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services; and the facility provides these services to residents who are living in private apartment-like units.

(5) "Community residential service business" means a business that:

(a) Is certified by the department of social and health services to provide to individuals who have a developmental disability as defined in RCW 71A.10.020(5):

(i) Group home services;

(ii) Group training home services;

(iii) Supported living services; or

(iv) Voluntary placement services provided in a licensed staff residential facility for children;

(b) Has a contract with the developmental disabilities administration to provide the services identified in (a) of this subsection; and

(c) All of the business's long-term care workers are subject to statutory or regulatory training requirements that are required to provide the services identified in (a) of this subsection.

(6) "Consumer" or "client" means a person who is receiving or has applied for services under this chapter, including a person who is receiving services from an individual provider.

(7) "Consumer directed employer" is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions. The consumer directed employer is patterned after the agency with choice model, recognized by the federal centers for medicare and medicaid services for financial management in consumer directed programs. The entity's responsibilities are described in RCW 74.39A.515 and throughout this chapter and include: (a) Coordination with the consumer, who is the individual provider's managing employer; (b) withholding, filing, and paying income and employment taxes, including workers' compensation premiums and unemployment taxes, for individual providers; (c) verifying an individual provider's qualifications; and (d) providing other administrative and employment-related supports. The consumer directed employer is a social service agency and its employees are mandated reporters as defined in RCW 74.34.020.

(8) "Core competencies" means basic training topics, including but not limited to, communication skills, worker self-care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, long-term care worker roles and boundaries, supporting activities of daily living, and food preparation and handling.

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

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

(11) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

(12) "Direct care worker" means a paid caregiver who provides direct, hands-on personal care services to persons with disabilities or the elderly requiring long-term care.

(13) "Enhanced adult residential care" means services provided by an assisted living facility that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

(14) "Facility" means an adult family home, an assisted living facility, a nursing home, an enhanced services facility licensed under chapter 70.97 RCW, or a facility certified to provide medicare or medicaid services in nursing facilities or intermediate care facilities for individuals with intellectual disabilities under 42 C.F.R. Part 483.

(15) "Home and community-based services" means services provided in adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed or certified by the department.

(16) "Home care aide" means a long-term care worker who is certified as a home care aide by the department of health under chapter 18.88B RCW.

(17) "Individual provider" is defined according to RCW 74.39A.240.

(18) "Legal employer" means the consumer directed employer, which along with the consumer, coemploys individual providers. The legal employer is responsible for setting wages and benefits for individual providers and must comply with applicable laws including, but not limited to, workers compensation and unemployment insurance laws.

(19) "Long-term care" means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age who are functionally disabled due to chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance provided by any individuals, groups, residential care settings, or professions unless otherwise required by law.

(20)(a) "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies or a consumer directed employer, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, enhanced services facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include: (i) Persons employed by the following facilities or agencies: Nursing homes licensed under chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or (ii) persons who are not paid by the state or by a private agency or facility licensed or certified by the state to provide personal care services.

(21) "Managing employer" means a consumer who coemploys one or more individual providers and whose responsibilities include (a) choosing potential individual providers and referring them to the consumer directed employer; (b) overseeing the day-to-day management and scheduling of the individual provider's tasks consistent with the plan of care; and (c) dismissing the individual provider when desired.

(22) "Nursing home" or "nursing facility" means a facility licensed under chapter 18.51 RCW or certified as a medicaid nursing facility under 42 C.F.R. Part 483, or both.

(23) "Person who is functionally disabled" means a person who because of a recognized chronic physical or mental condition or disease, including chemical dependency or developmental disability, is dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living," in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances may also be considered when assessing a person's functional abilities [ability] to perform activities in the home and the community.

(24) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

(25) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker is serving, including but not limited to, mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.

(26) "Qualified instructor" means a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands-on personal care and other assistance services to the elderly or persons with disabilities requiring long-term care.

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

(28) "Training partnership" means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

(29) "Tribally licensed assisted living facility" means an assisted living facility licensed by a federally recognized Indian tribe in which a facility provides services similar to services provided by assisted living facilities licensed under chapter 18.20 RCW. [2018 c 278 § 2. Prior: 2012 c 164 § 202; 2012 c 10 § 63; 2009 c 580 § 1; 2009 c 2 § 2 (Initiative Measure No. 1029, approved November 4, 2008); 2007 c 361 § 2; 2004 c 142 § 14; 1997 c 392 § 103.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Application—2012 c 10: See note following RCW 18.20.010.

Intent—Findings—Construction—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.050.

Findings—1997 c 392: "The legislature finds and declares that the state's current fragmented categorical system for administering services to persons with disabilities and the elderly is not client and family-centered and has created significant organizational barriers to providing high quality, safe, and effective care and support. The present fragmented system results in uncoordinated enforcement of regulations designed to protect the health and safety of disabled persons, lacks accountability due to the absence of management information systems' client tracking data, and perpetuates difficulty in matching client needs and services to multiple categorical funding sources.

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

The legislature further finds that the public demands that long-term care services be safe, client and family-centered, and designed to encourage individual dignity, autonomy, and development of the fullest human potential at

home or in other residential settings, whenever practicable." [1997 c 392 § 102.]

Additional notes found at www.leg.wa.gov

74.39A.010 Assisted living services and enhanced adult residential care—Contracts—Rules. (1) To the extent of available funding, the department of social and health services may contract with licensed assisted living facilities under chapter 18.20 RCW and tribally licensed assisted living facilities for assisted living services and enhanced adult residential care. The department shall develop rules for facilities that contract with the department for assisted living services or enhanced adult residential care to establish:

(a) Facility service standards consistent with the principles in RCW 74.39A.051 and consistent with chapter 70.129 RCW;

(b) Standards for resident living areas consistent with RCW 74.39A.030;

(c) Training requirements for providers and their staff.

(2) The department's rules shall provide that services in assisted living and enhanced adult residential care:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include, but not be limited to, personal care, nursing services, medication administration, and supportive services that promote independence and self-sufficiency;

(c) Are of sufficient scope to assure that each resident who chooses to remain in the assisted living or enhanced adult residential care may do so, to the extent that the care provided continues to be cost-effective and safe and promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice;

(d) Are directed first to those persons most likely, in the absence of enhanced adult residential care or assisted living services, to need hospital, nursing facility, or other out-of-home placement; and

(e) Are provided in compliance with applicable facility and professional licensing laws and rules.

(3) When a facility contracts with the department for assisted living services or enhanced adult residential care, only services and facility standards that are provided to or in behalf of the assisted living services or enhanced adult residential care client shall be subject to the department's rules. [2012 c 164 § 706; 2012 c 10 § 64; 1995 1st sp.s. c 18 § 14; 1993 c 508 § 3.]

Reviser's note: This section was amended by 2012 c 10 § 64 and by 2012 c 164 § 706, 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).

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Application—2012 c 10: See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

74.39A.020 Adult residential care—Contracts—Rules. (1) To the extent of available funding, the department of social and health services may contract for adult residential care.

(2) The department shall, by rule, develop terms and conditions for facilities that contract with the department for adult residential care to establish:

(a) Facility service standards consistent with the principles in RCW 74.39A.051 and consistent with chapter 70.129 RCW; and

(b) Training requirements for providers and their staff.

(3) The department shall, by rule, provide that services in adult residential care facilities:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include personal care and other services that promote independence and self-sufficiency and aging in place;

(c) Are directed first to those persons most likely, in the absence of adult residential care services, to need hospital, nursing facility, or other out-of-home placement; and

(d) Are provided in compliance with applicable facility and professional licensing laws and rules.

(4) When a facility contracts with the department for adult residential care, only services and facility standards that are provided to or in behalf of the adult residential care client shall be subject to the adult residential care rules.

(5) To the extent of available funding, the department may also contract under this section with a tribally licensed assisted living facility for the provision of services of the same nature as the services provided by adult residential care facilities. The provisions of subsections (2)(a) and (b) and (3)(a) through (d) of this section apply to such a contract. [2012 c 164 § 707; 2012 c 10 § 65; 2004 c 142 § 15; 1995 1st sp.s. c 18 § 15.]

Reviser's note: This section was amended by 2012 c 10 § 65 and by 2012 c 164 § 707, 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).

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Application—2012 c 10: See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

74.39A.030 Expansion of home and community services—Payment rates. (1) To the extent of available funding, the department shall expand cost-effective options for home and community services for consumers for whom the state participates in the cost of their care.

(2) In expanding home and community services, the department shall take full advantage of federal funding available under Title XVIII and Title XIX of the federal social security act, including home health, adult day care, waiver options, and state plan services and expand the availability of in-home services and residential services, including services in adult family homes, assisted living facilities, and enhanced services facilities.

(3)(a) The department shall by rule establish payment rates for home and community services that support the provision of cost-effective care. Beginning July 1, 2019, the department shall adopt a data-driven medicaid payment methodology as specified in RCW 74.39A.032 for contracted assisted living, adult residential care, and enhanced adult residential care. In the event of any conflict between any such rule and a collective bargaining agreement entered into under RCW 74.39A.270 and 74.39A.300, the collective bargaining agreement prevails.

(b) The department may authorize an enhanced adult residential care rate for nursing homes that temporarily or permanently convert their bed use under chapter 70.38 RCW for

the purposes of providing assisted living, enhanced adult residential care, or adult residential care, when the department determines that payment of an enhanced rate is cost-effective and necessary to foster expansion of these contracted services. As an incentive for nursing homes to permanently convert a portion of their nursing home bed capacity for the purposes of providing assisted living, enhanced adult residential care, or adult residential care, including but not limited to serving individuals with behavioral health treatment needs, the department may authorize a supplemental add-on to the residential care rate. [2019 c 324 § 11. Prior: 2018 c 278 § 6; 2018 c 225 § 2; 2012 c 10 § 66; 2002 c 3 § 10 (Initiative Measure No. 775, approved November 6, 2001); 1995 1st sp.s. c 18 § 2.]

Recommendations—Residential intensive behavioral health and developmental disability services—2019 c 324: "By July 1, 2020, the health care authority and the department of social and health services, in consultation with the department of health, the department of children, youth, and families, representatives from providers serving children's inpatient psychiatric needs in each of the three largest cities in Washington, representatives from behavioral health and developmental disability service providers, and representatives from developmental disability advocacy organizations including individuals and families of individuals who need or receive behavioral health and developmental disability services, must provide recommendations to the governor's office and the appropriate committees of the legislature relating to short-term and long-term residential intensive behavioral health and developmental disability services for youth and adults with developmental disabilities and behavioral health needs who are experiencing, or are in danger of experiencing, barriers discharging from inpatient behavioral health treatment received in community hospitals or state hospitals. The recommendations must address the needs of youth and adults with developmental or intellectual disabilities separately and: (1) Consider services necessary to support the youth or adult, the youth or adult's family, and the residential service provider in preparation for and after discharge, including in-home behavioral health and developmental disability supports that may be needed after discharge to maintain stability; (2) establish staffing and funding requirements that provide an appropriate level of treatment for residents in facilities, including both licensed mental health professionals and developmental disability professionals; and (3) for youth clients, consider how to successfully transition a youth to adult services without service disruption." [2019 c 324 § 10.]

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.

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Findings—Intent—2018 c 225: See note following RCW 74.39A.032.

Application—2012 c 10: See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

74.39A.032 Medicaid payment methodology for certain contracted assisted living facilities—Established by rule—Required components. (1) The department shall establish in rule a new medicaid payment system for contracted assisted living, adult residential care, and enhanced adult residential care. Beginning July 1, 2019, payments for these contracts must be based on the new methodology which must be phased-in to full implementation according to funding made available by the legislature for this purpose. The new payment system must have these components: Client care, operations, and room and board.

(2) Client care is the labor component of the system and must include variables to recognize the time and intensity of client care and services, staff wages, and associated fringe benefits. The wage variable in the client care component must be adjusted according to service areas based on labor costs.

(a) The time variable is used to weight the client care payment to client acuity and must be scaled according to the classification levels utilized in the department's assessment tool. The initial system shall establish a variable for time using the residential care time study conducted in 2001 and the department's corresponding estimate of the average staff hours per client by job position.

(b) The wage variable shall include recognition of staff positions needed to perform the functions required by contract, including nursing services. Data used to establish the wage variable must be adjusted so that no baseline wage is below the state minimum in effect at the time of implementation. The wage variable is a blended wage based on the federal bureau of labor statistics wage data and the distribution of time according to staff position. Blended wages are established for each county and then counties are arrayed from highest to lowest. Service areas are established and the median blended wage in each service area becomes the wage variable for all the assigned counties in that service area. The system must have no less than two service areas, one of which shall be a high labor cost service area and shall include counties at or above the ninety-fifth percentile in the array of blended wages.

(c) The fringe benefit variable recognizes employee benefits and payroll taxes. The factor to calculate the percentage of fringe benefits shall be established using the statewide nursing facility cost ratio of benefits and payroll taxes to in-house wages.

(3) The operations component must recognize costs that are allowable under federal medicaid rules for the federal matching percentage. The operations component is calculated at ninety percent or greater of the statewide median nursing facility costs associated with the following:

(a) Supplies;

(b) Nonlabor administrative expenses;

(c) Staff education and in-service training; and

(d) Operational overhead including licenses, insurance, and business and occupational [occupation] taxes.

(4) The room and board component recognizes costs that do not qualify for federal financial participation under medicaid rules by compensating providers for the medicaid client's share of raw food and shelter costs including expenses related to the physical plant such as property taxes, property and liability insurance, debt service, and major capital repairs. The room and board component is subject to the department's and the Washington state health care authority's rules related to client financial responsibility.

(5) Subsections (2) and (3) of this section establish the rate for medicaid covered services. Subsection (4) of this section establishes the rate for nonmedicaid covered services.

(6) The rates paid on July 1, 2019, shall be based on data from the 2016 calendar year, except for the time variable under subsection (2)(a) of this section. The client care and operations components must be rebased in even-numbered years. Beginning with rates paid on July 1, 2020, wages, benefits and taxes, and operations costs shall be rebased using 2018 data.

(7) Beginning July 1, 2020, the room and board component shall be updated annually subject to the department's and

the Washington state health care authority's rules related to client financial responsibility. [2018 c 225 § 3.]

Findings—Intent—2018 c 225: "(1) The legislature recognizes that Washington state has done an exemplary service for its citizens by expanding long-term care options for home and community-based services. Thousands of vulnerable low-income adults and seniors that would otherwise be in nursing facilities are able to receive the care they need in their own home, an assisted living unit, or an adult family home located near their family and friends, religious groups or other affiliations, and the neighborhoods they are familiar with. The legislature also recognizes that within the next ten years, the number of Washingtonians age seventy-one and older will grow by approximately sixty-three percent and within the next twenty-three years, this population will be about one hundred twenty percent of what it is today. In order to maintain and grow the current level of cost-effective options for long-term care, it is critical to update state policies including provider payment rates to ensure the availability of enrolled providers is sufficient to serve the number of beneficiaries who wish to remain within geographic proximity to their home community.

(2) The legislature intends to replace the outdated payment system with a new methodology that is:

(a) Transparent and understandable to the providers and the public;

(b) Aligns payments to client acuity and contractual requirements; and

(c) Is supported by relevant, verifiable, and independent data to the extent possible." [2018 c 225 § 1.]

74.39A.035 Expansion of nutrition services through the meals on wheels program. (1) Subject to the availability of amounts appropriated for this specific purpose, the department of social and health services must develop a program to expand nutrition services through the meals on wheels program.

(a) At least sixty-five percent of the moneys may be distributed according to formulae to existing providers of meals on wheels programs to expand the number of people served.

(b) Up to twenty-five percent of the moneys may be distributed by a competitive grant process to expand the meals on wheels program into areas not presently being served.

(c) Up to five percent of the moneys may be used by the department administration, monitoring of the grants, and providing technical assistance to existing and new meals on wheels providers.

(2) The department must develop criteria for awarding grants under subsection (1)(b) of this section. The criteria must include, but is not limited to:

(a) Expanding service in areas with the greatest need to assist low-income homebound seniors who are unable to prepare food for themselves and lack a caregiver that prepares meals;

(b) Expanding services in areas where senior citizens have limited access to community support services and facilities; and

(c) Geographic diversity within the state and between rural and urban areas.

(3) None of the grant moneys awarded under subsection (1)(b) of this section may be used to supplant existing funds the provider receives for the meals on wheels program. [2017 c 287 § 2.]

Findings—2017 c 287: "The legislature finds that:

(1) Washingtonians sixty-five years of age and older will nearly double in the next twenty-five years, from twelve percent of our population in 2015 to almost twenty-two percent of our population in 2040. Younger people with disabilities will also require supportive long-term care services.

(2) The long-term care system should support autonomy and self-determination. Furthermore, the long-term care system should promote personal planning and savings combined with public support, when needed.

(3) Whenever possible, the long-term care system should utilize evidence-based practices to improve the general health of Washingtonians over their lifetime[s] and reduce related health care and long-term care costs.

(4) Nutrition programs, such as the meals on wheels program, are a low-cost method of helping seniors remain independent." [2017 c 287 § 1.]

74.39A.040 Department assessment of and assistance to hospital patients in need of long-term care. The department shall work in partnership with hospitals in assisting patients and their families to find long-term care services of their choice. 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 to individuals who are hospitalized and likely to need long-term care.

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

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

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

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

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

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

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

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

(d) Discuss and evaluate the need for ongoing involvement with the individual or the individual's representative.

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

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

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

(c) Describe the role of the department in providing nursing facility case management. [1995 1st sp.s. c 18 § 6.]

Additional notes found at www.leg.wa.gov

74.39A.051 Quality improvement principles. The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or homelike environment for consumers consistent with chapter 392, Laws of 1997.

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

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

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

(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 70.97.110, 71A.12.300, 74.39A.080, or 70.128.160, or chapter 18.51 or 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) Background checks of long-term care workers must be conducted as provided in RCW 74.39A.056.

(8) Except as provided in RCW 74.39A.074 and 74.39A.076, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules to implement this section. The department shall deny payment to a consumer directed employer or a home care agency for services provided by employees who have not completed the training requirements within the time limit specified by department rules. The department shall deny payment to any individual providers who provide services under a contract with the department if they have been notified that they are no longer permitted to work because they have not completed the training requirements within the time period required by department rules.

(9) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications. [2018 c 278 § 7; 2012 c 164 § 701; 2012 c 1 § 106 (Initiative Measure No. 1163, approved November 8, 2011).]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—Performance audits—Spending limits—Contingent effective dates—Application—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

74.39A.056 Background checks on long-term care workers. (1)(a) All long-term care workers shall be screened through state and federal background checks in a uniform and timely manner to verify that they do not have a history that would disqualify them from working with vulnerable persons. The department must process background checks for long-term care workers and make the information available to employers, prospective employers, and others as authorized by law.

(b)(i) Except as provided in (b)(ii) of this subsection, for long-term care workers hired on or after January 7, 2012, the background checks required under this section shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall require these long-term care workers to submit fingerprints for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. The department shall not pass on the cost of these criminal background checks to the workers or their employers.

(ii) This subsection does not apply to long-term care workers employed by community residential service businesses until January 1, 2016.

(c) The department shall share state and federal background check results with the department of health in accordance with RCW 18.88B.080.

(d) Background check screening required under this section and department rules is not required for an employee of a consumer directed employer if all of the following circumstances apply:

(i) The individual has an individual provider contract with the department;

(ii) The last background check on the contracted individual provider is still valid under department rules and did not disqualify the individual from providing personal care services;

(iii) Employment by the consumer directed employer is the only reason a new background check would be required; and

(iv) The department's background check results have been shared with the consumer directed employer.

(2) No provider, or its staff, or long-term care worker, or prospective provider or long-term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority or a court of law or entered into a state registry with a final substantiated finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(3) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have final substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair

hearing requirements. The department shall disclose, upon request, final substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information must also be shared with the department of health to advance the purposes of chapter 18.88B RCW.

(4) The department shall adopt rules to implement this section. [2018 c 278 § 8; 2012 c 164 § 503; 2012 c 1 § 101 (Initiative Measure No. 1163, approved November 8, 2011).]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—2012 c 1 (Initiative Measure No. 1163): "It is the intent of the people through this initiative to protect vulnerable elderly and people with disabilities by reinstating the requirement that all long-term care workers obtain criminal background checks and adequate training. The people of the state of Washington find as follows:

(1) The state legislature proposes to eliminate the requirement that long-term care workers obtain criminal background checks and adequate training, which would jeopardize the safety and quality care of vulnerable elderly and persons with disabilities. Should the legislature take this action, this initiative will reinstate these critical protections for vulnerable elderly and persons with disabilities; and

(2) Taxpayers' investment will be protected by requiring regular program audits, including fraud investigations, and capping administrative expenses." [2012 c 1 § 1 (Initiative Measure No. 1163, approved November 8, 2011).]

Performance audits—2012 c 1 (Initiative Measure No. 1163): "The state auditor shall conduct performance audits of the long-term in-home care program. The first audit must be completed within twelve months after January 7, 2012, and must be completed on a biennial basis thereafter. As part of this auditing process, the state shall hire five additional fraud investigators to ensure that clients receiving services at taxpayers' expense are medically and financially qualified to receive the services and are actually receiving the services." [2012 c 164 § 709; 2012 c 1 § 201 (Initiative Measure No. 1163, approved November 8, 2011).]

Spending limits—2012 c 1 (Initiative Measure No. 1163): "The people hereby establish limits on the percentage of tax revenues that can be used for administrative expenses in the long-term in-home care program. Within one hundred eighty days of January 7, 2012, the state shall prepare a plan to cap administrative expenses so that at least ninety percent of taxpayer spending must be devoted to direct care. This limitation must be achieved within two years from January 7, 2012." [2012 c 1 § 202 (Initiative Measure No. 1163, approved November 8, 2011).]

Contingent effective dates—2012 c 1 (Initiative Measure No. 1163): "(1) Sections 101 and 115(6) of this act only take effect if RCW 74.39A.055 is amended or repealed by the legislature in 2011.

(2) Sections 102 and 115(10) of this act only take effect if RCW 74.39A.260 is amended or repealed by the legislature in 2011.

(3) Sections 103 and 115(1) of this act only take effect if RCW 18.88B.020 is amended or repealed by the legislature in 2011.

(4) Sections 104 and 115(2) of this act only take effect if RCW 18.88B.030 is amended or repealed by the legislature in 2011.

(5) Sections 105 and 115(3) of this act only take effect if RCW 18.88B.040 is amended or repealed by the legislature in 2011.

(6) Sections 106 and 115(5) of this act only take effect if RCW 74.39A.050 is amended or repealed by the legislature in 2011.

(7) Sections 107 and 115(7) of this act only take effect if RCW 74.39A.073 is amended or repealed by the legislature in 2011.

(8) Sections 108 and 115(8) of this act only take effect if RCW 74.39A.075 is amended or repealed by the legislature in 2011.

(9) Sections 109 and 115(9) of this act only take effect if RCW 74.39A.085 is amended or repealed by the legislature in 2011.

(10) Sections 110 and 115(11) of this act only take effect if RCW 74.39A.310 is amended or repealed by the legislature in 2011.

(11) Sections 111 and 115(12) of this act only take effect if RCW 74.39A.330 is amended or repealed by the legislature in 2011.

(12) Sections 112 and 115(13) of this act only take effect if RCW 74.39A.340 is amended or repealed by the legislature in 2011.

(13) Sections 113 and 115(14) of this act only take effect if RCW 74.39A.350 is amended or repealed by the legislature in 2011.

(14) Sections 114 and 115(4) of this act only take effect if RCW 74.39A.009 is amended or repealed by the legislature in 2011.

(15) Section 303 of this act takes effect only if one or more other sections of this act take effect pursuant to paragraphs (1) through (14) of this section." [2012 c 1 § 301 (Initiative Measure No. 1163, approved November 8, 2011).]

Application—2012 c 1 (Initiative Measure No. 1163): "Notwithstanding any action of the legislature during 2011, all long-term care workers as defined under RCW 74.39A.009(16), as it existed on April 1, 2011, are covered by sections 101 through 113 of this act or by the corresponding original versions of the statutes, as referenced in section 302 (1) through (13) on the schedules set forth in those sections, as amended by chapter 164, Laws of 2012, except that long-term care workers employed by community residential service businesses are exempt to the extent provided in RCW 18.88B.041, 74.39A.056, 74.39A.074, 74.39A.331, 74.39A.341, and 74.39A.351." [2012 c 164 § 710; 2012 c 1 § 303 (Initiative Measure No. 1163, approved November 8, 2011).]

Construction—2012 c 1 (Initiative Measure No. 1163): "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2012 c 1 § 305 (Initiative Measure No. 1163, approved November 8, 2011).]

Effective date—2012 c 1 (Initiative Measure No. 1163): "This act takes effect sixty days from its *enactment by the people [January 7, 2012]." [2012 c 1 § 307 (Initiative Measure No. 1163, approved November 8, 2011).]

***Reviser's note:** Initiative Measure No. 1163 was approved by a vote of the people November 8, 2011. The secretary of state has determined that the effective date of Initiative Measure No. 1163 is January 7, 2012.

Short title—2012 c 1 (Initiative Measure No. 1163): "This act may be known and cited as the restoring quality home care initiative." [2012 c 1 § 308 (Initiative Measure No. 1163, approved November 8, 2011).]

74.39A.060 Toll-free telephone number for complaints—Investigation and referral—Rules—Discrimination or retaliation prohibited. (1) The aging and long-term support administration of the department shall establish and maintain a toll-free telephone number for receiving complaints regarding facilities and community residential services businesses as defined in this chapter.

(2) Each facility shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number and the toll-free number and program description of the long-term care ombuds as required by RCW 43.190.050.

(3) The aging and long-term support administration shall investigate complaints it receives about facilities and community residential services businesses unless the department determines that: (a) The complaint is intended to willfully harass the provider or the provider's employee; or (b) there is no reasonable basis for investigation; or (c) corrective action has been taken as determined by the ombuds or the department.

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

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

(a) Upon receipt of a complaint, the department shall make a preliminary review of the complaint, assess the severity of the complaint, and assign an appropriate response time. Complaints involving imminent danger to the health, safety, or well-being of a resident must be responded to within two days. When appropriate, the department shall make an on-site

investigation within a reasonable time after receipt of the complaint or otherwise ensure that complaints are responded to.

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

(c) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults allegedly harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(d) Substantiated complaints involving harm to a resident, if an applicable law or rule has been violated, shall be subject to one or more of the actions provided in RCW 74.39A.080 or 70.128.160. Whenever appropriate, the department shall also give consultation and technical assistance to the provider.

(e) 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 or contract 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.

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

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

(7) The resident has the right to be free of interference, coercion, discrimination, and reprisal from a facility in exercising his or her rights, including the right to voice grievances about treatment furnished or not furnished. A facility that provides long-term care services shall not discriminate or retaliate in any manner against a resident, employee, or any other person on the basis or for the reason that such resident or any other person made a complaint to the department, the attorney general, law enforcement agencies, or the long-term care ombuds, provided information, or otherwise cooperated with the investigation of such a complaint. Any attempt to discharge a resident against the resident's wishes, or any type of retaliatory treatment of a resident by whom or upon whose behalf a complaint substantiated by the department has been made to the department, the attorney general, law enforcement agencies, or the long-term care ombuds, within one year of the filing of the complaint, raises a rebuttable presumption that such action was in retaliation for the filing of the complaint. "Retaliatory treatment" means, but is not limited to, monitoring a resident's phone, mail, or visits; involuntary seclusion or isolation; transferring a resident to a different room unless requested or based upon legitimate management reasons; withholding or threatening to withhold food or treatment unless authorized by a terminally ill resident or his or her representative pursuant to law; or persistently delaying responses to a resident's request for service or assistance. A facility that provides long-term care services shall not willfully interfere with the performance of official duties by a long-term care ombuds. The department shall sanction and may impose a civil penalty of not more than three thousand dollars for a violation of this subsection. [2018 c 278 § 9; 2013 c 23 § 227; 2001 c 193 § 1; 1999 c 176 § 34; 1997 c 392 § 210; 1995 1st sp.s. c 18 § 13.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

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

74.39A.070 Rules for qualifications and training requirements—Requirement that contractors comply with federal and state regulations. (1) The department shall, by rule, establish reasonable minimum qualifications and training requirements to assure that assisted living service, enhanced adult residential care service, and adult residential care providers with whom the department contracts are capable of providing services consistent with this chapter. The rules shall apply only to residential capacity for which the state contracts.

(2) The department shall not contract for assisted living, enhanced adult residential care, or adult residential care services with a provider if the department finds that the provider or any partner, officer, director, managerial employee, or owner of five percent or more of the provider 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. [1995 1st sp.s. c 18 § 16.]

Additional notes found at www.leg.wa.gov

74.39A.074 Training requirements for long-term care workers. (1)(a) Except for long-term care workers exempt from certification under RCW 18.88B.041(1)(a), all persons hired as long-term care workers must meet the minimum training requirements in this section within one hundred twenty calendar days after the date of being hired.

(b) Except as provided in RCW 74.39A.076, the minimum training requirement is seventy-five hours of entry-level training approved by the department. A long-term care worker must successfully complete five of these seventy-five hours before being eligible to provide care.

(c) Training required by (d) of this subsection applies toward the training required under RCW 18.20.270 or 70.128.230 or any statutory or regulatory training requirements for long-term care workers employed by community residential service businesses.

(d) The seventy-five hours of entry-level training required shall be as follows:

(i) Before a long-term care worker is eligible to provide care, he or she must complete:

(A) Two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment; and

(B) Three hours of safety training, including basic safety precautions, emergency procedures, and infection control; and

(ii) Seventy hours of long-term care basic training, including training related to:

(A) Core competencies; and

(B) Population specific competencies, including identification of individuals with potential hearing loss and how to seek assistance if hearing loss is suspected.

(2) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors on the competencies and training topics in this section.

(3) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(4) The department shall adopt rules to implement this section. [2017 c 216 § 1; 2012 c 164 § 401; 2012 c 1 § 107 (Initiative Measure No. 1163, approved November 8, 2011).]

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—Performance audits—Spending limits—Contingent effective dates—Application—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

74.39A.076 Training requirements for individual providers caring for family members. (1) Beginning January 7, 2012, except for long-term care workers exempt from certification under RCW 18.88B.041(1)(a):

(a) A biological, step, or adoptive parent who is the individual provider only for the person's developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days after becoming an individual provider.

(b) A spouse or registered domestic partner who is a long-term care worker only for a spouse or domestic partner, pursuant to the long-term services and supports trust program established in chapter 50B.04 RCW, must receive fifteen hours of basic training, and at least six hours of additional focused training based on the care-receiving spouse's or partner's needs, within the first one hundred twenty days after becoming a long-term care worker.

(c) A person working as an individual provider who (i) provides respite care services only for individuals with developmental disabilities receiving services under Title 71A RCW or only for individuals who receive services under this chapter, and (ii) works three hundred hours or less in any calendar year, must complete fourteen hours of training within the first one hundred twenty days after becoming an individual provider. Five of the fourteen hours must be completed before becoming eligible to provide care, including two hours of orientation training regarding the caregiving role and terms of employment and three hours of safety training. The training partnership identified in RCW 74.39A.360 must offer at least twelve of the fourteen hours online, and five of those online hours must be individually selected from elective courses.

(d) Individual providers identified in (d)(i) or (ii) of this subsection must complete thirty-five hours of training within the first one hundred twenty days after becoming an individual provider. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:

(i) An individual provider caring only for the individual provider's biological, step, or adoptive child or parent unless covered by (a) of this subsection; and

(ii) A person working as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(2) In computing the time periods in this section, the first day is the date of hire.

(3) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(4) The department shall adopt rules to implement this section. [2019 c 363 § 19; 2018 c 220 § 1; 2017 c 267 § 1; 2015 c 152 § 2; 2014 c 139 § 7; 2012 c 164 § 402; 2012 c 1 § 108 (Initiative Measure No. 1163, approved November 8, 2011).]

Finding—Intent—Program development—Implementation—Program funding—2014 c 139: See notes following RCW 71A.16.050.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—Performance audits—Spending limits—Contingent effective dates—Application—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

74.39A.078 Rules for the approval of curricula for facility-based caregivers serving persons with behavioral health needs and geriatric behavioral health workers—Curricula requirements. The department shall adopt rules to establish minimum competencies and standards for the approval of curricula for facility-based caregivers serving persons with behavioral health needs and geriatric behavioral health workers. The curricula must include at least thirty hours of training specific to the diagnosis, care, and crisis management of residents with a mental health disorder, traumatic brain injury, or dementia. The curricula must be outcome-based, and the effectiveness measured by demonstrated competency in the core specialty areas through the use of a competency test. [2017 c 200 § 1.]

74.39A.080 Department authority to take actions in response to noncompliance or violations. (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 a provider of assisted living services, adult residential care services, or enhanced adult residential care services has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated 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 contract;

(b) Impose reasonable conditions on a contract, 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 not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a contract; or

(e) Suspend admissions to the facility by imposing stop placement on contracted services.

(3) When the department orders stop placement, the facility shall not admit any person admitted by contract 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 when: (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.

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.

(4) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing contracts suspension, stop placement, or conditions for continuation of a contract are effective immediately upon notice and shall continue pending any hearing. [2001 c 193 § 3; 1996 c 193 § 1; 1995 1st sp.s. c 18 § 17.]

Additional notes found at www.leg.wa.gov

74.39A.086 Enforcement actions against persons not certified as home care aides and their employers—Rule-making authority. (1) The department shall take appropriate enforcement action related to the contract of a consumer directed employer or a licensed or certified private agency or facility that provides long-term care services and knowingly employs a long-term care worker who is not a certified home care aide as required under chapter 18.88B RCW or, if exempted from certification under RCW 18.88B.041, who has not completed his or her required training under RCW 74.39A.074.

(2) The department shall deny payment to individual providers who provided services under a contract with the department if they have been notified that they are no longer permitted to work because they:

(a) Were not certified as home care aides as required under chapter 18.88B RCW; or

(b) Had not completed the training required under RCW 74.39A.074.

(3) The department may terminate the contract of any individual provider under contract with the department who:

(a) Is not certified as a home care aide as required under chapter 18.88B RCW; or

(b) Has not completed the training required under RCW 74.39A.074.

(4) Chapter 34.05 RCW shall govern actions by the department under this section.

(5) The department shall adopt rules to implement this section. [2018 c 278 § 10; 2012 c 164 § 602; 2012 c 1 § 109 (Initiative Measure No. 1163, approved November 8, 2011).]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—Performance audits—Spending limits—Contingent effective dates—Application—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

74.39A.090 Discharge planning—Contracts for case management services and reassessment and reauthorization—Assessment of case management roles and quality of in-home care services—Plan of care model language. (1) Discharge planning, as directed in this section, is intended for residents and patients identified for discharge to long-term services under RCW 70.41.320, 74.39A.040, or 74.42.058. The purpose of discharge planning is to protect residents and patients from the financial incentives inherent in keeping residents or patients in a more expensive higher level of care and shall focus on care options that are in the best interest of the patient or resident.

(2) The department shall, consistent with the intent of this section, contract with area agencies on aging:

(a) To provide case management services to consumers receiving home and community services in their own home; and

(b) To reassess and reauthorize home and community services in home or in other settings for consumers:

(i) Who have been initially authorized by the department to receive home and community services; and

(ii) Who, at the time of reassessment and reauthorization, are receiving home and community services in their own home.

(3) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(4)(a) The department shall include, in its oversight and monitoring of area agency on aging performance, assessment of case management roles undertaken by area agencies on aging in this section. The scope of oversight and monitoring includes, but is not limited to, assessing the degree and quality of the case management performed by area agency on aging staff for elderly and persons with disabilities in the community.

(b) The department shall incorporate the expected outcomes and criteria to measure the performance of service coordination organizations into contracts with area agencies on aging as provided in chapter 70.320 RCW.

(5) Area agencies on aging shall assess the quality of the in-home care services provided to consumers who are receiving services under programs authorized through the medicaid state plan, medicaid waiver authorities, or similar state-funded in-home care programs through an individual provider or home care agency. Quality indicators may include, but are not limited to, home care consumers satisfaction surveys, how quickly home care consumers are linked with home care workers, and whether the plan of care under RCW 74.39A.095 has been honored by the agency or the individual provider.

(6) The department shall develop model language for the plan of care established in RCW 74.39A.095. The plan of care shall be in clear language, and written at a reading level that will ensure the ability of consumers to understand the rights and responsibilities expressed in the plan of care. [2018 c 278 § 11; 2013 c 320 § 10; 2004 c 141 § 3; 1999 c 175 § 2; 1995 1st sp.s. c 18 § 38.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Findings—1999 c 175: "(1) The legislature finds that the quality of long-term care services provided to, and protection of, Washington's low-income elderly and disabled residents is of great importance to the state. The legislature further finds that revised in-home care policies are needed to more effectively address concerns about the quality of these services.

(2) The legislature finds that consumers of in-home care services frequently are in contact with multiple health and long-term care providers in the public and private sector. The legislature further finds that better coordination between these health and long-term care providers, and case managers, can increase the consumer's understanding of their plan of care, maximize the health benefits of coordinated care, and facilitate cost efficiencies across health and long-term care systems." [1999 c 175 § 1.]

Additional notes found at www.leg.wa.gov

74.39A.095 Case management services—Duties of the area agencies on aging—Consumers' plans of care—Notification to consumer directed employer. (1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under programs authorized through the medicaid state plan, medicaid waiver authorities, or similar state-funded in-home care programs, to the extent of available funding, each area agency on aging shall:

(a) Work with each client to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services and supports. In developing the plan, the area agency on aging shall use and modify as needed any comprehensive plan of care developed by the department as provided in RCW 74.39A.040;

(b) Monitor the implementation of the consumer's plan of care to verify that it adequately meets the needs of the consumer through activities such as home visits, telephone contacts, and responses to information received by the area agency on aging indicating that a consumer may be experiencing problems relating to his or her home care;

(c) Reassess and reauthorize services;

(d) Explain to the consumer that consumers have the right to waive case management services offered by the area agency on aging, except consumers may not waive the area agency on aging's reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care; and

(e) Document the waiver of any case management services by the consumer.

(2) Each consumer has the right to direct and participate in the development of their plan of care to the maximum

extent practicable, and to be provided with the time and support necessary to facilitate that participation.

(3) As authorized by the consumer, a copy of the plan of care may be distributed to: (a) The consumer's individual provider contracted with the department; (b) the entity contracted with the department to provide personal care services; and (c) other relevant providers with whom the consumer has frequent contact.

(4) If an individual provider is employed by a consumer directed employer, the department or area agency on aging must notify the consumer directed employer if:

(a) There is reason to believe that an individual provider or prospective individual provider is not delivering or will not be able to deliver the services identified in the consumer's plan of care; or

(b) The individual provider's performance is jeopardizing the health, safety, or well-being of a consumer receiving services under this section. [2018 c 278 § 12; 2014 c 40 § 1; 2012 c 164 § 507. Prior: 2011 1st sp.s. c 31 § 14; 2011 1st sp.s. c 21 § 5; 2009 c 580 § 8; 2004 c 141 § 1; 2002 c 3 § 11 (Initiative Measure No. 775, approved November 6, 2001); 2000 c 87 § 5; 1999 c 175 § 3.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Findings—1999 c 175: See note following RCW 74.39A.090.

74.39A.100 Chore services—Legislative finding, intent. The legislature finds that it is desirable to provide a coordinated and comprehensive program of in-home services for certain citizens in order that such persons may remain in their own homes, obtain employment if possible, and maintain a closer contact with the community. Such a program will seek to prevent mental and psychological deterioration which our citizens might otherwise experience. The legislature intends that the services will be provided in a fashion which promotes independent living. [1980 c 137 § 1; 1973 1st ex.s. c 51 § 1. Formerly RCW 74.08.530.]

74.39A.110 Chore services—Legislative policy and intent regarding available funds—Levels of service. It is the intent of the legislature that chore services be provided to eligible persons within the limits of funds appropriated for that purpose. Therefore, the department shall provide services only to those persons identified as at risk of being placed in a long-term care facility in the absence of such services. The department shall not provide chore services to any individual who is eligible for, and whose needs can be met by another community service administered by the department. Chore services shall be provided to the extent necessary to maintain a safe and healthful living environment. It is the policy of the state to encourage the development of volunteer chore services in local communities as a means of meeting chore care service needs and directing financial resources. In determining eligibility for chore services, the department shall consider the following:

(1) The kind of services needed;

(2) The degree of service need, and the extent to which an individual is dependent upon such services to remain in his or her home or return to his or her home;

(3) The availability of personal or community resources which may be utilized to meet the individual's need; and

(4) Such other factors as the department considers necessary to insure service is provided only to those persons whose chore service needs cannot be met by relatives, friends, nonprofit organizations, other persons, or by other programs or resources.

In determining the level of services to be provided under this chapter, the client shall be assessed using an instrument designed by the department to determine the level of functional disability, the need for service and the person's risk of long-term care facility placement. [1995 1st sp.s. c 18 § 36; 1989 c 427 § 5; 1981 1st ex.s. c 6 § 16. Formerly RCW 74.08.545.]

Additional notes found at www.leg.wa.gov

74.39A.120 Chore services—Expenditure limitation—Priorities—Rule on patient resource limit. (1) The department shall establish a monthly dollar lid for each region on chore services expenditures within the legislative appropriation. Priority for services shall be given to the following situations:

(a) People who were receiving chore personal care services as of June 30, 1995;

(b) People for whom chore personal care services are necessary to return to the community from a nursing home;

(c) People for whom chore personal care services are necessary to prevent unnecessary nursing home placement; and

(d) People for whom chore personal care services are necessary as a protective measure based on referrals resulting from an adult protective services investigation.

(2) The department shall require a client to participate in the cost of chore services as a necessary precondition to receiving chore services paid for by the state. The client shall retain an amount equal to one hundred percent of the federal poverty level, adjusted for household size, for maintenance needs. The department shall consider the remaining income as the client participation amount for chore services except for those persons whose participation is established under *RCW 74.08.570.

(3) The department shall establish, by rule, the maximum amount of resources a person may retain and be eligible for chore services. [1995 1st sp.s. c 18 § 37.]

***Reviser's note:** RCW 74.08.570 was recodified as RCW 74.39A.150 pursuant to 1995 1st sp.s. c 18 § 34.

Additional notes found at www.leg.wa.gov

74.39A.130 Chore services—Department to develop program. (1) The department is authorized to develop a program to provide for chore services under this chapter.

(2) The department may provide assistance in the recruiting of providers of the services enumerated in RCW 74.39A.120 and seek to assure the timely provision of services in emergency situations.

(3) The department shall assure that all providers of the chore services under this chapter are compensated for the delivery of the services on a prompt and regular basis. [1995

1st sp.s. c 18 § 40; 1989 c 427 § 6; 1983 c 3 § 189; 1980 c 137 § 2; 1973 1st ex.s. c 51 § 3. Formerly RCW 74.08.550.]

Additional notes found at www.leg.wa.gov

74.39A.140 Chore services—Employment of public assistance recipients. In developing the program set forth in *RCW 74.08.550, the department shall, to the extent possible, and consistent with federal law, enlist the services of persons receiving grants under the provisions of chapter 74.08 RCW and chapter 74.12 RCW to carry out the services enumerated under **RCW 74.08.541. To this end, the department shall establish appropriate rules and regulations designed to determine eligibility for employment under this section, as well as regulations designed to notify persons receiving such grants of eligibility for such employment. The department shall further establish a system of compensation to persons employed under the provisions of this section which provides that any grants they receive under chapter 74.08 RCW or chapter 74.12 RCW shall be diminished by such percentage of the compensation received under this section as the department shall establish by rules and regulations. [1983 c 3 § 190; 1973 1st ex.s. c 51 § 4. Formerly RCW 74.08.560.]

Reviser's note: *(1) RCW 74.08.550 was recodified as RCW 74.39A.130 pursuant to 1995 1st sp.s. c 18 § 34, effective July 1, 1995.

**(2) RCW 74.08.541 was repealed by 1995 1st sp.s. c 18 § 35, effective July 1, 1995.

74.39A.150 Chore services for persons with disabilities—Eligibility. (1) An otherwise eligible disabled person shall not be deemed ineligible for chore services under this chapter if the person's gross income from employment, adjusted downward by the cost of the chore services to be provided and the disabled person's work expenses, does not exceed the maximum eligibility standard established by the department for such chore services. The department shall establish a methodology for client participation that allows such disabled persons to be employed.

(2) If a disabled person arranges for chore services through an individual provider arrangement, the client's contribution shall be counted as first dollar toward the total amount owed to the provider for chore services rendered.

(3) As used in this section:

(a) "Gross income" means total earned wages, commissions, salary, and any bonus;

(b) "Work expenses" includes:

(i) Payroll deductions required by law or as a condition of employment, in amounts actually withheld;

(ii) The necessary cost of transportation to and from the place of employment by the most economical means, except rental cars; and

(iii) Expenses of employment necessary for continued employment, such as tools, materials, union dues, transportation to service customers if not furnished by the employer, and uniforms and clothing needed on the job and not suitable for wear away from the job;

(c) "Employment" means any work activity for which a recipient receives monetary compensation;

(d) "Disabled" means:

(i) Permanently and totally disabled as defined by the department and as such definition is approved by the federal social security administration for federal matching funds;

(ii) Eighteen years of age or older;

(iii) A resident of the state of Washington; and

(iv) Willing to submit to such examinations as are deemed necessary by the department to establish the extent and nature of the disability. [1995 1st sp.s. c 18 § 41; 1989 c 427 § 7; 1980 c 137 § 3. Formerly RCW 74.08.570.]

Additional notes found at www.leg.wa.gov

74.39A.155 Support for persons at risk of institutional placement. Within funds appropriated for this purpose, the department shall provide additional support for residents in community settings who exhibit challenging behaviors that put them at risk for institutional placement. The residents must be receiving services under programs authorized through the medicaid state plan, medicaid waiver authorities, or similar state-funded in-home care programs, and must have been evaluated under the individual comprehensive assessment reporting and evaluation process. [2018 c 278 § 14; 2008 c 146 § 8.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Findings—Intent—Severability—2008 c 146: See notes following RCW 74.41.040.

74.39A.160 Transfer of assets—Penalties. (1) A person who receives an asset from an applicant for or recipient of long-term care services for less than fair market value shall be subject to a civil fine payable to the department if:

(a) The applicant for or recipient of long-term care services transferred the asset for the purpose of qualifying for state or federal coverage for long-term care services and the person who received the asset was aware, or should have been aware, of this purpose;

(b) Such transfer establishes a period of ineligibility for such service under state or federal laws or regulations; and

(c) The department provides coverage for such services during the period of ineligibility because the failure to provide such coverage would result in an undue hardship for the applicant or recipient.

(2) The civil fine imposed under this section shall be imposed in a judicial proceeding initiated by the department and shall equal (a) up to one hundred fifty percent of the amount the department expends for the care of the applicant or recipient during the period of ineligibility attributable to the amount transferred to the person subject to the civil fine plus (b) the department's court costs and legal fees.

(3) Transfers subject to a civil fine under this section shall be considered null and void and a fraudulent conveyance as to the department. The department shall have the right to petition a court to set aside such transfers and require all assets transferred returned to the applicant or recipient. [1995 1st sp.s. c 18 § 55.]

Additional notes found at www.leg.wa.gov

74.39A.170 Recovery of payments—Transfer of assets rules for eligibility—Disclosure of estate recovery costs, terms, and conditions. (1) All payments made in state-funded long-term care shall be recoverable as if they were medical assistance payments subject to recovery under

42 U.S.C. Sec. 1396p and chapter 43.20B RCW, but without regard to the recipient's age.

(2) In determining eligibility for state-funded long-term care services programs, the department shall impose the same rules with respect to the transfer of assets for less than fair market value as are imposed under 42 U.S.C. 1396p with respect to nursing home and home and community services.

(3) It is the responsibility of the department to fully disclose in advance verbally and in writing, in easy to understand language, the terms and conditions of estate recovery to all persons offered long-term care services subject to recovery of payments.

(4) In disclosing estate recovery costs to potential clients, and to family members at the consent of the client, the department shall provide a written description of the community service options.

(5) The department of social and health services shall develop an implementation plan for notifying the client or his or her legal representative at least quarterly of the types of services used and the cost of those services (debt) that will be charged against the estate. The estate planning implementation plan shall be submitted by December 12, 1999, to the appropriate standing committees of the house of representatives and the senate, and to the joint legislative and executive task force on long-term care. [1999 c 354 § 1; 1995 1st sp.s. c 18 § 56.]

Recovery for state-funded long-term care—Legislative intent: RCW 43.20B.090.

Additional notes found at www.leg.wa.gov

74.39A.180 Authority to pay for probate actions and collection of bad debts. Notwithstanding any other provision of law:

(1) In order to facilitate and ensure compliance with the federal social security act, Title XIX, as now existing or hereafter amended, later enactment to be adopted by reference by the director by rule, and other state laws mandating recovery of assets from estates of persons receiving long-term care services, the secretary of the department, with the approval of the office of the attorney general, may pay the reasonable and proper fees of attorneys admitted to practice before courts of this state, and associated professionals such as guardians, who are engaged in probate practice for the purpose of maintaining actions under Title 11 RCW, to the end that assets are not wasted, but are rather collected and preserved, and used for the care of the client or the reimbursement of the department pursuant to this chapter or chapter 43.20B RCW.

(2) The department may hire such other agencies and professionals on a contingency basis or otherwise as are necessary and cost-effective to collect bad debts owed to the department for long-term care services. [1995 1st sp.s. c 18 § 57.]

Additional notes found at www.leg.wa.gov

74.39A.200 Training curricula, materials—In public domain—Exceptions. All training curricula and material, except competency testing material, developed by or for the department and used in part or in whole for the purpose of improving provider and caregiver knowledge and skill are in the public domain unless otherwise protected by copyright law and are subject to disclosure under chapter 42.56 RCW. Any training curricula and material developed by a private entity through a contract with the department are also considered part of the public domain and shall be shared subject to copyright restrictions. Any proprietary curricula and material developed by a private entity for the purposes of training staff in facilities licensed under chapter 18.20 or 70.128 RCW or individual providers and home care agency providers under this chapter and approved for training by the department are not part of the public domain. [2005 c 274 § 355; 2000 c 121 § 11.]

74.39A.210 Disclosure of employee information—Employer immunity—Rebuttable presumption. An employer providing home and community services, including facilities licensed under chapters 18.51, 18.20, 70.97, and 70.128 RCW, an employer of a program operating under RCW 71A.12.040(10), a consumer directed employer, or an in-home services agency employer licensed under chapter 70.127 RCW, who discloses information about a former or current employee to a prospective home and community services employer, nursing home employer, consumer directed employer, or in-home services agency employer, is presumed to be acting in good faith and is immune from civil and criminal liability for such disclosure or its consequences if the disclosed information relates to: (1) The employee's ability to perform his or her job; (2) the diligence, skill, or reliability with which the employee carried out the duties of his or her job; or (3) any illegal or wrongful act committed by the employee when related to his or her ability to care for a vulnerable adult. For purposes of this section, the presumption of good faith may only be rebutted upon a showing by clear and convincing evidence that the information disclosed by the employer was knowingly false or made with reckless disregard for the truth of the information disclosed. If the employee successfully rebuts the presumption of good faith standard in a court of competent jurisdiction, as the prevailing party, the employee shall be entitled to recover reasonable attorneys' fees against the employer. Nothing in this section shall affect or limit any other state, federal, or constitutional right otherwise available. [2018 c 278 § 15; 2001 c 319 § 13.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

74.39A.240 Definitions. The definitions in this section apply throughout RCW 74.39A.030, 74.39A.095, *74.39A.220 through 74.39A.300, and 41.56.026 unless the context clearly requires otherwise.

(1) "Consumer" means a person to whom an individual provider provides any such services.

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

(3) "Individual provider" means a person, including a personal aide, who, under an individual provider contract with the department or as an employee of a consumer directed employer, provides personal care or respite care services to persons who are functionally disabled or otherwise eligible under programs authorized and funded by the medicaid state plan, medicaid waiver programs[,] chapter 71A.12 RCW, RCW 74.13.270, or similar state-funded in-home care programs. [2018 c 278 § 16; 2011 1st sp.s. c 21 § 7; 2002 c 3

§ 3 (Initiative Measure No. 775, approved November 6, 2001).]

***Reviser's note:** RCW 74.39A.220 was repealed by 2018 c 278 § 32.

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

74.39A.250 Individual provider referral registry—Consumer directed employer duties—Department duties. (1) If a consumer directed employer employs individual providers, the consumer directed employer shall:

(a) Provide assistance to consumers and prospective consumers in finding individual providers and prospective individual providers through the operation of a referral registry of individual providers and prospective individual providers.

(b) Before placing an individual provider or prospective individual provider on the referral registry, determine that the individual provider or prospective individual provider:

(i) Has met the minimum requirements for training under RCW 74.39A.051 and 74.39A.074;

(ii) Has satisfactorily completed a background check within the prior twelve months; and

(iii) Is not listed on any state or federal registry described in RCW 74.39A.056 or on other registries maintained by the department.

(c) Remove from the referral registry any individual provider or prospective individual provider who does not meet the qualifications set forth in this subsection (1) or whose employment as an individual provider has been terminated based on good cause.

(d) Provide routine, emergency, and respite referrals of individual providers and prospective individual providers to consumers and prospective consumers who are authorized to receive long-term in-home care services through an individual provider.

(e) Not allow an individual provider to provide services to a consumer without the consumer's consent.

(2) The department shall perform the activities under subsection (1) of this section if the department has not transitioned the responsibilities under this section to a consumer directed employer. [2018 c 278 § 17; 2012 c 164 § 708; 2011 1st sp.s. c 21 § 8; 2002 c 3 § 4 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

74.39A.261 Background checks on individual providers—Department duties. If the department contracts with individual providers, the department must perform background checks for individual providers and prospective individual providers under RCW 74.39A.056. [2018 c 278 § 18; 2012 c 164 § 502; 2012 c 1 § 102 (Initiative Measure No. 1163, approved November 8, 2011).]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—Performance audits—Spending limits—Contingent effective dates—Application—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

74.39A.270 Individual providers contracted with the department—Collective bargaining—Circumstances in which individual providers are considered public employees—Exceptions—Limitations. The following provisions apply only to individual providers who are contracted with the department to provide personal care or respite care services:

(1) Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer, as defined in chapter 41.56 RCW, of individual providers, who, solely for the purposes of collective bargaining, are public employees as defined in chapter 41.56 RCW. To accommodate the role of the state as payor for the community-based services provided under this chapter and to ensure coordination with state employee collective bargaining under chapter 41.80 RCW and the coordination necessary to implement RCW 74.39A.300, the public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW. The department shall solicit input from the developmental disabilities council, the governor's committee on disability issues and employment, the state council on aging, and other consumer advocacy organizations to obtain informed input from consumers on their interests, including impacts on consumer choice, for all issues proposed for collective bargaining under subsections (5) and (7) of this section.

(2) Chapter 41.56 RCW governs the collective bargaining relationship between the governor and individual providers, except as otherwise expressly provided in this chapter and except as follows:

(a) The only unit appropriate for the purpose of collective bargaining under RCW 41.56.060 is a statewide unit of all individual providers;

(b) The showing of interest required to request an election under RCW 41.56.060 is ten percent of the unit, and any intervener seeking to appear on the ballot must make the same showing of interest;

(c) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the bargaining representative of individual providers, negotiations shall be commenced by May 1st of any year prior to the year in which an existing collective bargaining agreement expires; and

(ii) The decision of the arbitrator is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and fringe benefit provisions of the arbitrated collective bargaining agreement, is not binding on the authority or the state;

(d) Individual providers do not have the right to strike; and

(e) Individual providers who are related to, or family members of, consumers or prospective consumers are not, for that reason, exempt from this chapter or chapter 41.56 RCW.

(3) Individual providers who are public employees solely for the purposes of collective bargaining under subsec-

tion (1) of this section are not, for that reason, employees of the state, its political subdivisions, or an area agency on aging for any purpose. Chapter 41.56 RCW applies only to the governance of the collective bargaining relationship between the employer and individual providers as provided in subsections (1) and (2) of this section.

(4) Consumers and prospective consumers retain the right to select, hire, supervise the work of, and terminate any individual provider providing services to them. Consumers may elect to receive long-term in-home care services from individual providers who are not referred to them by the department or a department contractor.

(5) Except as expressly limited in this section and RCW 74.39A.300, the wages, hours, and working conditions of individual providers are determined solely through collective bargaining as provided in this chapter. Except as described in RCW 74.39A.525, no agency or department of the state may establish policies or rules governing the wages or hours of individual providers.

(6) Nothing in this section modifies:

(a) The department's authority to deny individual provider contracts to individuals who will not be able to meet the needs of a consumer or to terminate contracts of individual providers who are not adequately meeting the needs of a particular consumer; or

(b) The consumer's right to: (i) Assign hours to one or more individual providers consistent with the rules adopted under this chapter and his or her plan of care; and (ii) select, hire, terminate, supervise the work of, and determine the conditions of employment for each individual provider providing services to the consumer under this chapter.

(7) At the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over the following subjects:

(a) Employer contributions to the training partnership for the costs of: (i) Meeting all training and peer mentoring requirements under this chapter; and (ii) other training intended to promote the career development of individual providers; and

(b) How the department's core responsibility affects hours of work for individual providers; this subsection shall not be interpreted to require collective bargaining over an individual consumer's plan of care.

(8) The state, the department, the area agencies on aging, or their contractors under this chapter may not be held vicariously or jointly liable for the action or inaction of any individual provider or prospective individual provider, whether or not that individual provider or prospective individual provider was included on the referral registry or referred to a consumer or prospective consumer. The existence of a collective bargaining agreement, the placement of an individual provider on the referral registry, or the development or approval of a plan of care for a consumer who chooses to use the services of an individual provider and the provision of case management services to that consumer, by the department or an area agency on aging, does not constitute a special relationship with the consumer.

(9) Nothing in this section affects the state's responsibility with respect to unemployment insurance for individual providers. However, individual providers are not to be considered, as a result of the state assuming this responsibility, employees of the state. [2018 c 278 § 19; 2017 3rd sp.s. c 24 § 1; 2016 sp.s. c 30 § 1; 2011 1st sp.s. c 21 § 10; 2007 c 361 § 7; 2007 c 278 § 3; 2006 c 106 § 1; 2004 c 3 § 1; 2002 c 3 § 6 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Effective date—2017 3rd sp.s. c 24: "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, 2017]." [2017 3rd sp.s. c 24 § 2.]

Effective date—2016 sp.s. 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 18, 2016]." [2016 sp.s. c 30 § 4.]

Overtime emergency rules—2016 sp.s. c 30: "The department of social and health services shall immediately adopt emergency rules under RCW 34.05.350 to limit the number of hours per workweek that the department may pay any single provider to forty hours and to establish criteria to authorize additional hours in accordance with section 1 of this act. The emergency rules shall remain in effect until permanent rules can be adopted." [2016 sp.s. c 30 § 2.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

74.39A.275 Individual provider overtime—Annual expenditure reports to legislature and joint legislative-executive overtime oversight task force. In order to monitor quality of care and safety of consumers, employment conditions of individual providers, and compliance with the provisions of payment of hours in excess of forty hours each workweek for any single individual provider, the department must provide annual expenditure reports to the legislative fiscal committees and joint legislative-executive overtime oversight task force created under RCW 74.39A.525. The report must contain the following information:

(1) The number of individual providers receiving payment for more than forty hours in a workweek, specifying how many of those individual providers were eligible for those hours due to meeting the conditions of RCW 74.39A.525.

(2) The number of hours paid and the amount paid for hours in excess of forty hours in a workweek, specifying how many of those hours and payments were for individual providers eligible for those hours and payments due to meeting the conditions of RCW 74.39A.525 (1) or (2).

(3) In reporting the information required in subsections (1) and (2) of this section, the department must provide total amounts, averages, and a display of the distribution of the amounts.

(4) The information required must be provided by department region and county of client, department program, and must be specified for individual providers by the number of clients they serve.

(5) Any personally identifiable information of consumers and individual providers used to develop this report is confidential under RCW 43.17.410 and exempt from public disclosure, inspection, or copying in accordance with chapter 42.56RCW. However, information may be released in aggregate form, with any personally identifiable information redacted, for the purpose of statistical analysis and oversight

of agency performance and actions. [2018 c 278 § 21; 2016 sp.s. c 30 § 3.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Effective date—Overtime emergency rules—2016 sp.s. c 30: See notes following RCW 74.39A.270.

74.39A.300 Funding process—Department-contracted individual providers. If the department contracts with any individual providers for personal care services, funding will be determined in accordance with the following process:

(1) Upon meeting the requirements of subsection (2) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to administer in-home care programs under this chapter and to implement the compensation and fringe benefits provisions of a collective bargaining agreement entered into under RCW 74.39A.270 or for legislation necessary to implement such agreement.

(2) A request for funds necessary to implement the compensation and fringe benefits provisions of a collective bargaining agreement entered into under RCW 74.39A.270 shall not be submitted by the governor to the legislature unless such request:

(a) Has been submitted to the director of financial management by October 1st prior to the legislative session at which the request is to be considered; and

(b) Has been certified by the director of financial management as being feasible financially for the state or reflects the binding decision of an arbitrator reached under RCW 74.39A.270(2)(c).

(3) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any such agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

(4) When any increase in individual provider wages or benefits is negotiated or agreed to, no increase in wages or benefits negotiated or agreed to under this chapter will take effect unless and until, before its implementation, the department has determined that the increase is consistent with federal law and federal financial participation in the provision of services under Title XIX of the federal social security act.

(5) The governor shall periodically consult with the joint committee on employment relations established by RCW 41.80.010 regarding appropriations necessary to implement the compensation and fringe benefits provisions of any collective bargaining agreement and, upon completion of negotiations, advise the committee on the elements of the agreement and on any legislation necessary to implement such agreement.

(6) After the expiration date of any collective bargaining agreement entered into under RCW 74.39A.270, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement, except as provided in RCW 74.39A.270.

(7) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement. [2018 c 278 § 22; 2004 c 3 § 2; 2002 c 3 § 9 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Additional notes found at www.leg.wa.gov

74.39A.310 Contract for individual home care services providers—Cost of increase in wages and benefits funded or increase in labor rates—Formula. (1) The department shall create a formula that converts into a per-hour amount, excluding those benefits defined in subsection (3) of this section, the cost of the increase in:

(a) Wages and benefits negotiated and funded in the contract for individual providers of home care services pursuant to RCW 74.39A.270 and 74.39A.300; or

(b) The labor rates established under RCW 74.39A.530.

(2) The per-hour amount from subsection (1) of this section shall be added to the statewide home care agency vendor rate and shall be used exclusively for improving the wages and benefits of home care agency workers who provide direct care. The formula shall account for:

(a) All types of wages, benefits, and compensation negotiated and funded each biennium, including but not limited to:

(i) Regular wages;

(ii) Benefit pay, such as vacation, sick, and holiday pay;

(iii) Taxes on wages/benefit pay;

(iv) Mileage; and

(v) Contributions to a training partnership; and

(b) The increase in the average cost of worker's compensation for home care agencies and application of the increases identified in (a) of this subsection to all hours required to be paid, including travel time, of direct service workers under the wage and hour laws and associated employer taxes.

(3) The contribution rate for health care benefits, including but not limited to medical, dental, and vision benefits, for eligible agency home care workers shall be paid by the department to home care agencies at the same rate as negotiated and funded in the collective bargaining agreement for individual providers of home care services. [2018 c 278 § 23; 2007 c 361 § 8; 2006 c 9 § 1.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Additional notes found at www.leg.wa.gov

74.39A.320 Establishment of capital add-on rate—Determination of medicaid occupancy percentage. (1) To the extent funds are appropriated for this purpose, the department shall establish a capital add-on rate, not less than the July 1, 2005, capital add-on rate established by the department, for those assisted living facilities contracting with the department that have a medicaid occupancy percentage of sixty percent or greater.

(2) Effective for July 1, 2006, and for each July 1st rate-setting period thereafter, the department shall determine the facility's medicaid occupancy percentage using the last six months' medicaid resident days from the preceding calendar year divided by the product of all its licensed assisted living facility beds irrespective of use, times calendar days for the six-month period. For the purposes of this section, medic-

aid resident days include those clients who are enrolled in a medicaid managed long-term care program, including but not limited to the program for all inclusive care and the medicaid integration project.

(3) The medicaid occupancy percentage established beginning on July 1, 2006, and for each July 1st thereafter, shall be used to determine whether an assisted living facility qualifies for the capital add-on rate under this section. Those facilities that qualify for the capital add-on rate shall receive the capital add-on rate throughout the applicable fiscal year. [2012 c 10 § 67; 2006 c 260 § 1.]

Application—2012 c 10: See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

74.39A.325 In-home personal care or respite services—Electronic timekeeping. (1) The department shall not pay a home care agency licensed under chapter 70.127 RCW for in-home personal care or respite services provided under this chapter, Title 71A RCW, or chapter 74.39 RCW if the home care agency does not verify agency employee hours by electronic timekeeping except in circumstances where electronic verification is not possible as verified by the home care agency.

(2) For purposes of this section, "electronic timekeeping" means an electronic, verifiable method of recording an employee's presence with the client at the beginning and end of the employee's client visit shift. [2014 c 40 § 2; 2009 c 571 § 2.]

Conflict with federal requirements—2009 c 571: "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." [2009 c 571 § 3.]

Effective date—2009 c 571: "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 19, 2009]." [2009 c 571 § 4.]

74.39A.326 In-home personal care or respite services to family members—Department not authorized to pay—Exceptions—Enforcement—Rules. (1)(a) Except as provided under (b) of this subsection, the department shall not pay a home care agency licensed under chapter 70.127 RCW for in-home personal care or respite services provided under this chapter, Title 71A RCW, or chapter 74.39 RCW if the care is provided to a client by a family member of the client. To the extent permitted under federal law, the provisions of this subsection shall not apply if the family member providing care is older than the client.

(b) The department may, on a case-by-case basis based on the client's health and safety, make exceptions to (a) of this subsection to authorize payment or to provide for payment during a transition period of up to three months. Within available funds, the restrictions under (a) of this subsection do not apply when the care is provided to: (i) A client who is an enrolled member of a federally recognized Indian tribe; or (ii) a client who resides in the household of an enrolled member of a federally recognized Indian tribe.

(2) The department shall take appropriate enforcement action against a home care agency found to have charged the state for hours of service for which the department is not authorized to pay under this section, including requiring recoupment of any payment made for those hours and, under criteria adopted by the department by rule, terminating the contract of an agency that violates a recoupment requirement.

(3) For purposes of this section:

(a) "Client" means a person who has been deemed eligible by the department to receive in-home personal care or respite services.

(b) "Family member" shall be liberally construed to include, but not be limited to, a parent, child, sibling, aunt, uncle, cousin, grandparent, grandchild, grandniece, or grandnephew, or such relatives when related by marriage.

(4) The department shall adopt rules to implement this section. The rules shall not result in affecting the amount, duration, or scope of the personal care or respite services benefit to which a client may be entitled pursuant to RCW 74.09.520 or Title XIX of the federal social security act. [2017 3rd sp.s. c 34 § 3; 2009 c 571 § 1.]

Findings—Intent—2017 3rd sp.s. c 34: "The legislature finds that the most common form of long-term care provided to persons who are elderly, disabled, or have a developmental disability is provided by a family member in a personal residence. The legislature also finds that care provided by a family member who is chosen by the recipient is often the most appropriate form of care, allowing vulnerable individuals to remain independent while maintaining a sense of dignity and choice. The current system of medicaid services has complexities that may create obstacles for consumers who wish to be cared for by a family member and for family members who enter the system solely to provide care for their loved ones.

Therefore, the legislature intends to direct a study of the current options allowing for the delivery of medicaid personal care services by caregivers who are family members of the state's citizens who are aging, disabled, or who have a developmental disability. The legislature intends to promote more flexibility for clients to access their benefits and to reduce obstacles for clients who wish to hire family members to provide their care." [2017 3rd sp.s. c 34 § 1.]

Conflict with federal requirements—Effective date—2009 c 571: See notes following RCW 74.39A.325.

74.39A.331 Peer mentoring. Long-term care workers shall be offered on-the-job training or peer mentorship for at least one hour per week in the first ninety days of work from a long-term care worker who has completed at least twelve hours of mentor training and is mentoring no more than ten other workers at any given time. This requirement applies to long-term care workers who begin work on or after July 1, 2012, except that it does not apply to long-term care workers employed by community residential service businesses until January 1, 2016. [2012 c 164 § 403; 2012 c 1 § 111 (Initiative Measure No. 1163, approved November 8, 2011).]

Reviser's note: The language of this section, as enacted by 2012 c 1 § 111, was identical to RCW 74.39A.330 as amended by 2009 c 478 § 1, which was repealed by 2012 c 1 § 115. This section has since been amended by 2012 c 164 § 403.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—Performance audits—Spending limits—Contingent effective dates—Application—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

74.39A.341 Continuing education requirements for long-term care workers. (1) All long-term care workers shall complete twelve hours of continuing education training

in advanced training topics each year. This requirement applies beginning July 1, 2012.

(2) Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification under chapter 18.88B RCW.

(3) Unless voluntarily certified as a home care aide under chapter 18.88B RCW, subsection (1) of this section does not apply to:

(a) An individual provider caring only for his or her biological, step, or adoptive child;

(b) Registered nurses and licensed practical nurses licensed under chapter 18.79 RCW;

(c) Before January 1, 2016, a long-term care worker employed by a community residential service business;

(d) A person working as an individual provider who provides twenty hours or less of care for one person in any calendar month; or

(e) A person working as an individual provider who only provides respite services and works less than three hundred hours in any calendar year.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(5) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(6) The department of health shall adopt rules to implement subsection (1) of this section.

(7) The department shall adopt rules to implement subsection (2) of this section. [2015 c 152 § 3; 2014 c 139 § 8; 2013 c 259 § 3; 2012 c 164 § 405; 2012 c 1 § 112 (Initiative Measure No. 1163, approved November 8, 2011).]

Reviser's note: The language of this section, as enacted by 2012 c 1 § 112, was identical to RCW 74.39A.340 as amended by 2009 c 580 § 12, which was repealed by 2012 c 1 § 115.

Finding—Intent—Program development—Implementation—Program funding—2014 c 139: See notes following RCW 71A.16.050.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—Performance audits—Spending limits—Contingent effective dates—Application—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

74.39A.351 Advanced training. (1) The department shall offer, directly or through contract, training opportunities sufficient for a long-term care worker to accumulate seventy hours of training within a reasonable time period. For individual providers represented by an exclusive bargaining representative, the training opportunities shall be offered through the training partnership established under RCW 74.39A.360.

(2) Training topics offered under this section shall include, but are not limited to: Client rights; personal care; mental illness; dementia; developmental disabilities; depression; medication assistance; advanced communication skills; positive client behavior support; developing or improving client-centered activities; dealing with wandering or aggressive client behaviors; medical conditions; nurse delegation core training; peer mentor training; and advocacy for quality care training.

(3) The department may not require long-term care workers to obtain the training described in this section. [2018 c 278 § 24; 2012 c 164 § 404; 2012 c 1 § 113 (Initiative Measure No. 1163, approved November 8, 2011).]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—Performance audits—Spending limits—Contingent effective dates—Application—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

74.39A.360 Training partnership. (1) If the department has any contracts for personal care services with any individual providers represented by an exclusive bargaining representative:

(a) All training and peer mentoring required under this chapter shall be provided by a training partnership;

(b) Contributions to the partnership shall be made under a collective bargaining agreement negotiated under this chapter;

(c) The training partnership shall provide reports as required by the department verifying that all individual providers have complied with all training requirements; and

(d) The exclusive bargaining representative shall designate the training partnership.

(2) When individual providers are employed by a consumer directed employer, funding for training shall be included in the labor rate component paid to the consumer directed employer as determined and funded under RCW 74.39A.530. [2018 c 278 § 25; 2007 c 361 § 6.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Additional notes found at www.leg.wa.gov

74.39A.370 Addressing long-term care complaint workload. Subject to funding provided for this specific purpose, the department of social and health services shall use additional investigative resources to address a significant growth in the long-term care complaint workload. The department shall use the resulting licensor resources to meet current statutory requirements and timelines. "Complaints," as used in this section, include both complaints about provider practice, under chapters 70.128, 18.20, 18.51, and 74.42 RCW, and complaints about individuals alleged to have abused, neglected, abandoned, or exploited residents or clients, under chapter 74.34 RCW. [2011 1st sp.s. c 3 § 501.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

74.39A.380 Internal quality review and accountability program for residential care services—Quality assurance panel—Report. (1) Subject to funding provided for this specific purpose, the department of social and health services shall develop for phased-in implementation a statewide internal quality review and accountability program for residential care services. The program must be designed to enable the department to improve the accountability of staff and the consistent application of investigative activities

across all long-term care settings, and must allow the systematic monitoring and evaluation of long-term care licensing and certification. The program must be designed to improve and standardize investigative outcomes for the vulnerable individuals at risk of abuse and neglect, and coordinate outcomes across the department to prevent perpetrators from changing settings and continuing to work with vulnerable adults.

(2) The department shall convene a quality assurance panel to review problems in the quality of care in adult family homes and to reduce incidents of abuse, neglect, abandonment, and financial exploitation. The state's long-term care ombuds shall chair the panel and identify appropriate stakeholders to participate. The panel must consider inspection, investigation, public complaint, and enforcement issues that relate to adult family homes. The panel must also focus on oversight issues to address de minimis violations, processes for handling unresolved citations, and better ways to oversee new providers. The panel shall meet at least quarterly, and provide a report with recommendations to the governor's office, the senate health and long-term care committee, and the house of representatives health and wellness committee by December 1, 2012. [2013 c 23 § 228; 2011 1st sp.s. c 3 § 502.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

74.39A.390 Personal care services—Glove access. (1) The legislature finds and declares that universal precautions are important health and safety protections for home care clients and workers who provide direct care for those clients. The use of personal protective equipment such as gloves is an established component of universal precautions and a key tool to protect against exposure to blood-borne pathogens such as hepatitis B virus, hepatitis C virus, and human immunodeficiency virus. Most medicaid clients are eligible to receive gloves through their medicaid benefit, yet the majority of clients are not aware of or do not use this benefit and as a result do not have gloves available in the home for individual providers to use. The legislature intends to improve the availability and usage of gloves by individual providers as part of universal precautions by ensuring that medicaid clients access gloves through their medicaid benefit.

(2) For medicaid clients, the department shall coordinate with the health care authority to assist clients receiving personal care services in accessing gloves as part of their health benefit for individual providers to use in the course of providing tasks where universal precautions are warranted. The assistance by the department and the health care authority must be designed to facilitate clients being able to access gloves on a monthly basis in a cost-effective and easy to access manner and must be consistent with requirements to receive federal matching funds under medicaid.

(3) In cases where clients are not eligible to receive such gloves under medicaid, the department shall work with the health care authority to develop a methodology to ensure clients have access to gloves on a monthly basis in a cost-effective and easy to access manner.

(4) The department shall submit a brief report with data on utilization of gloves by clients who are served by individual providers to the health care committees of the legislature by December 1, 2015. [2014 c 70 § 1.]

74.39A.400 Personal care services—Community first choice option. (1) The department of social and health services shall refinance medicaid personal care services under the community first choice option. Beginning July 1, 2014, the department shall seek stakeholder input on program and system design prior to the submission of a proposal to the center for medicaid and medicare services. The community first choice option shall be designed in such a way to meet the federal minimum maintenance of effort requirements and all service requirements as specified in federal rule. Optional services may also be included in the benefit package. In the first full year of implementation, the increase in per capita cost of services directly resulting from meeting the federal requirements of the community first choice option, as well as the cost of new optional services, shall not exceed a three percent increase over the per capita costs of personal care services in the fiscal year prior to full implementation of the community first choice option. The three percent limit on new expenditures shall not apply to cost increases that are not the result of implementing the community first choice option, including case load growth, case mix changes, inflation, vendor rate changes, expenditures necessary to meet state and federal law requirements, and any adjustments made pursuant to collective bargaining. The community first choice option must be fully implemented no later than August 30, 2015.

(2) The department shall use general fund—state savings from the refinance in this section to offset additional caseload, per capita cost increases, and staff resources necessary to implement the community first choice option. Any remaining general fund—state savings from the refinance shall be reserved for potential investments in home and community-based services for individuals with developmental disabilities or individuals with long-term care needs, including investments recommended by the joint legislative executive committee on aging and disability and the development and implementation council that the department must convene prior to submitting the proposed community first choice option to the centers for medicare and medicaid services. At a minimum, the final report to the legislature from the joint legislative executive committee on aging and disability must explore the cost and benefit of rate enhancements for providers of long-term services and supports, restoration of hours for in-home clients, additional investment in the family caregiver support program, and additional investment in the individual and family services program or other medicaid services to support individuals with developmental disabilities. [2014 c 166 § 2.]

Findings—2014 c 166: "(1) The legislature finds that the July 31, 2013, state auditor's report on developmental disabilities in Washington indicates that fifteen thousand individuals with developmental disabilities who meet the financial and physical eligibility requirements do not currently receive any services from the state. For that reason, the legislature finds that it is necessary to take action that will increase the number of eligible individuals who may access personal care services.

(2) The legislature finds that by 2030, nearly twenty percent or one out of five people in our state will be age sixty-five or older and our state is not prepared for the growing demand for long-term services and supports. Washington must plan for the future long-term services and supports needs of its residents by utilizing alternative long-term care financing options.

(3) The legislature further finds that personal care services allow individuals with significant care needs to live in their own homes and communities. By utilizing the community first choice option, an enhanced federal matching percentage would increase the funding available for these services. Further, the community first choice option may increase the self-sufficiency of clients by emphasizing the acquisition, maintenance, and enhancement of skills to complete health-related tasks. For these reasons, the legislature finds that the department of social and health services must refinance personal care services through the community first choice option." [2014 c 166 § 1.]

74.39A.500 Consumer directed employer program—Establishment—Structure—Vendor qualifications—Transition—Department duties. (1) The department may establish and implement a consumer directed employer program to provide personal care, respite care, and similar services to individuals with functional impairments under programs authorized through the medicaid state plan or medicaid waiver authorities and similar state-funded in-home care programs.

(a) The consumer directed employer program is a consumer directed program and must be operated in a manner consistent with federal medicaid requirements. The consumer directed employer is the legal employer of individual providers for administrative purposes.

(b) Under the consumer directed employer program, the consumer is the managing employer of individual providers and retains the primary right to select, dismiss, assign hours, and supervise the work of one or more individual providers, as long as the consumer's actions are consistent with the consumer's plan of care, this chapter, and state and federal law.

(2) The department shall endeavor to select and contract with one consumer directed employer to be a medicaid provider that will coemploy individual providers. The department shall make every effort to select a single qualified vendor. In the event it is not possible to contract with a single vendor, the department is authorized to contract with up to two vendors. The department's activities to identify, select, and contract with a consumer directed employer are exempt from the requirements of chapter 39.26 RCW.

(a) When contracting with a consumer directed employer, the department should seek to contract with a vendor that demonstrates:

(i) A strong commitment to consumer choice, self-direction, and maximizing consumer autonomy and control over daily decisions; and

(ii) A commitment to recruiting and retaining a high quality and diverse workforce and working with a broad coalition of stakeholders in an effort to understand the changing needs of the workforce and consumer needs and preferences.

(b) Additional factors the department should consider in selecting a vendor include, but are not limited to, the vendor's:

(i) Ability to provide maximum support to consumers to focus on directing their own services through a model that recognizes that the provision of employer responsibility and human resource administration support is integral to successful self-directed home care programs;

(ii) Commitment to engage and work closely with consumers in design, implementation, and ongoing operations through an advisory board, focus group, or other methods as approved by the department;

(iii) Focus on workforce retention and creating incentives for qualified and trained providers to meet the growing needs of state long-term care consumers;

(iv) Ability to meet the state's interest in preventing or mitigating disruptions to consumer services;

(v) Ability to deliver high quality training, health care, and retirement, which may include participation in existing trusts that deliver those benefits;

(vi) Ability to comply with the terms and conditions of employment of individual providers at the time of the transition;

(vii) Commitment to involving its home care workforce in decision making;

(viii) Vision for including and enhancing home care workers as a valued member of the consumer's care team, as desired and authorized by the consumer and reflected in the consumer's plan of care; and

(ix) Ability to build and adapt technology tools that can enhance efficiency and provide better quality of services.

(c) In order to be qualified as a consumer directed employer, an entity must meet the requirements in: (i) Its contract with the department; (ii) the medicaid state plan; (iii) rules adopted under this chapter, if any; and (iv) this section.

(d) Any qualified and willing individual may apply to become an employee of a consumer directed employer and may work as an individual provider when selected by a consumer.

(e) A consumer directed employer that holds a contract with the department to provide medicaid services through the employment of individual providers is deemed to be a certified medicaid provider.

(f) A consumer directed employer is not a home care agency under chapter 70.127 RCW.

(g) A consumer directed employer that also provides home care services under chapter 70.127 RCW must demonstrate to the department's satisfaction that it operates the programs under separate business units, and that its business structures, policies, and procedures will prevent any conflicts of interest.

(3) If the department selects and contracts with a consumer directed employer, the department shall determine when to terminate the department's contracts with individual providers.

(a) Until the department determines the transition to the consumer directed employer program is complete, the state shall continue to administer the individual provider program for the remaining contracted individual providers and to act as the public employer solely for the purpose of collective bargaining under RCW 74.39A.270 for those directly contracted individual providers.

(b) Once the department determines that the transition to the consumer directed employer is complete, the department may no longer contract with individual providers, unless there are not any contracted consumer directed employers available.

(4) The department shall convene a stakeholder group to make recommendations to the legislature on the establishment of a separate licensure or certification category for a consumer directed employer. The stakeholder group shall make their recommendations by October 1, 2018.

(5) The department of labor and industries shall initially place individual providers employed by a consumer directed employer in the classification for the home care services and home care referral registry. After the department determines that the transition to the consumer directed employer program is complete, the department of labor and industries may, if necessary, adjust the classification and rate in accordance with chapter 51.16 RCW.

(6) After the date on which the department enters into a contract with the consumer directed employer and determines the transition to the consumer directed employer program is complete, biennial funding in the next ensuing biennium for case management and social work shall be reduced by no more than: Two million nine hundred eight thousand dollars for area agencies on aging; one million three hundred sixty-one thousand dollars for home and community services; and one million two hundred eighty-nine thousand dollars for developmental disabilities. [2018 c 278 § 3.]

Findings—Intent—2018 c 278: "The legislature finds that quality long-term in-home care services allow Washington seniors, persons with disabilities, and their families the choice of remaining in their own homes and communities, including whether to receive residential services, use licensed home care agencies, or coemploy individual providers.

The legislature further finds that long-term in-home care services are a less costly alternative to institutional care, saving Washington taxpayers significant amounts through lower reimbursement rates. Thousands of Washington seniors and persons with disabilities exercise their choice to live in their own homes and receive needed assistance through in-home services.

The legislature finds that many Washington seniors and persons with disabilities currently receive long-term in-home care services from individual providers hired directly by them under programs authorized through the medicaid state plan or medicaid waiver authorities and similar state-funded in-home care programs.

The legislature further finds that establishing a consumer directed employer program will: (1) Support the state's intent for consumers to direct their own services; (2) allow the state to focus on the provision of case management services to consumers; (3) enhance the efficient and effective delivery of home-based services by using an entity that provides the administrative functions of an employer and supports the consumer to manage the services provided in their own homes; (4) eliminate the possible classification of the state as the joint employer of individual providers; (5) prevent or reduce unnecessary and costly utilization of hospitals and institutions by taking a step toward integration of home care workers into a coordinated delivery system; and (6) support the development of new technology and interventions to enhance the skills of home care workers and services provided to consumers.

The legislature does not intend for the consumer directed employer program to replace the consumers' option to select a qualified home care agency to provide authorized in-home care." [2018 c 278 § 1.]

Consumer directed employer procurement process—Transition—Readiness review—Limitations—2018 c 278: "Upon the governor's signature of this act into law, the department of social and health services may begin the procurement process to select a consumer directed employer. The department shall initiate the transition of individual providers to the consumer directed employer no later than July 1, 2021, when it determines it is ready to do so based upon a readiness review conducted by the department.

Nothing in this act shall be deemed to result in individual providers becoming state employees or vesting in the state's public employment retirement system." [2018 c 278 § 30.]

74.39A.505 Consumer directed employer program—Rule-making authority—2018 c 278. The department may adopt any rules as it deems necessary to implement the provisions of chapter 278, Laws of 2018. [2018 c 278 § 4.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

74.39A.510 Consumer directed employer program—Limitations. (1) Nothing in chapter 278, Laws of 2018 modifies the department's:

(a) Authority to establish a plan of care for each consumer, including establishing the number of hours in a week a consumer may assign to any one provider consistent with RCW 74.39A.525;

(b) Core responsibility to manage long-term in-home care services under this chapter, including determination of the level of care that each consumer is eligible to receive;

(c) Obligation to comply with the federal medicaid laws and regulations, the state medicaid plan, or any waiver granted by the federal department of health and human services; and to ensure federal financial participation in the provision of services.

(2) Nothing in chapter 278, Laws of 2018 modifies the legislature's right to make programmatic modifications to the delivery of state services under this title, including eligibility standards for consumers, standards for individual providers, and the nature of services provided.

(3) Nothing in this chapter shall cause individuals who were hired as long-term care workers prior to January 7, 2012, to lose their exemption from certification requirements under RCW 18.88B.041 solely because they became employees of a consumer directed employer. [2018 c 278 § 5.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

74.39A.515 Duties of consumer directed employers that employ individual providers—Duties of area agencies on aging with respect to individual providers contracted with the department—Rule making. (1) If a consumer directed employer employs individual providers, then the consumer directed employer shall:

(a) Verify that each individual provider has met any training requirements established under this chapter and rules adopted under this chapter;

(b) Conduct background checks on individual providers as required under this chapter, RCW 43.43.830 through 43.43.842, 43.20A.710, and the rules adopted by the department; or verify that a background check has been conducted for each individual provider and that the background check is still valid in accordance with department rules;

(c) Implement an electronic visit verification system that complies with federal requirements, or in the absence of an electronic visit verification system, monitor a statistically valid sample of individual provider's claims to the receipt of services by the consumer;

(d) Monitor individual provider compliance with employment requirements;

(e) As authorized and determined by the consumer, provide a copy of the consumer's plan of care to the individual provider who has been selected by the consumer;

(f) Verify the individual provider is able and willing to carry out his or her responsibilities under the plan of care;

(g) Take into account information provided by the consumer or the consumer's case manager about the consumer's specific needs;

(h) Discontinue the individual provider's assignment to a consumer when the consumer directed employer has reason to believe, or the department or area agency on aging has reported, that the health, safety, or well-being of a consumer

is in imminent jeopardy due to the performance of the individual provider;

(i) Reject a request by a consumer to assign a specific person as his or her individual provider, if the consumer directed employer has reason to believe that the individual will be unable to appropriately meet the care needs of the consumer; and

(j) Establish a dispute resolution process for consumers who wish to dispute decisions made under (h) and (i) of this subsection.

(2) If any individual providers are contracted with the department to provide services under this chapter, the area agency on aging case management responsibilities shall include:

(a) Verifying that each individual provider has met all training requirements under this chapter and department rules;

(b) Conducting background checks on individual providers as required under this chapter, RCW 43.43.830 through 43.43.842, 43.20A.710, and department rules; or verifying that background checks have been conducted for each individual provider and that the background check is still valid in accordance with department rules;

(c) Monitoring that the individual provider is providing services as outlined in the consumer's plan of care;

(d) Attaching the consumer's plan of care to the contract with the individual provider;

(e) Verifying with the individual provider that he or she is able and willing to carry out his or her responsibilities under the plan of care;

(f) Terminating the contract between the department and the individual provider if the department or area agency on aging finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section;

(g) Summarily suspending the contract pending a fair hearing, if there is reason to believe the health, safety, or well-being of a consumer is in imminent jeopardy; and

(h) Rejecting a request by a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the case manager has reason to believe that the family member or other person will be unable to appropriately meet the care needs of the consumer.

(3) The consumer may request a fair hearing under chapter 34.05 RCW to contest a planned action of the case manager under subsection (2)(g) and (h) of this section.

(4) The department may adopt rules to implement this section. [2018 c 278 § 13.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

74.39A.520 Individual providers employed by a consumer directed employer—Consumer's right to select, schedule, supervise, or dismiss individual providers. The following provisions apply only if individual providers are employed by a consumer directed employer:

(1) Consumers and prospective consumers have the right to select, schedule, supervise the work of, and dismiss any individual provider providing services to them consistent with the consumer's plan of care.

(2) Nothing in this section modifies:

(a) The consumer directed employer's authority to:

(i) Refuse to employ an individual provider who may not be able to meet the needs of a particular consumer;

(ii) Assign an individual provider who has been dismissed by a consumer to a different consumer who has selected the individual provider;

(iii) Provide information to a consumer about an individual provider's work history as an employee of the consumer directed employer; or

(iv) Terminate the provider's employment when the individual is not meeting the needs of the consumer.

(b) The consumer's right to:

(i) Assign hours to one or more individual providers consistent with this chapter, the rules adopted under this chapter, and his or her plan of care; or

(ii) Dismiss an individual provider. [2018 c 278 § 20.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

74.39A.525 Overtime criteria—Department-contracted individual providers—Individual providers employed by a consumer directed employer—Rule making—Expenditure reports—Joint legislative-executive overtime oversight task force. (1) Except as authorized by subsection (3) or (4) of this section or otherwise required by law, the department may not permit a client to use a single department-contracted individual provider for more than forty hours in one workweek.

(2) A consumer directed employer that employs individual providers:

(a) Must permit a client to use a single individual provider more than forty hours in a workweek if required by rules adopted under subsection (3) of this section;

(b) May permit an individual provider to work additional hours in accordance with subsection (4) of this section; and

(c) May permit an individual provider to work more than forty hours per workweek.

(3) The department shall adopt rules describing criteria under which a consumer may be permitted to use a single individual provider for more than forty hours per week. At a minimum, the criteria shall limit the state's exposure to exceeding the expenditure limits established in this section, require consumers to use good faith efforts to locate additional providers, address travel time from worksite to worksite, and address the following needs of consumers:

(a) Emergencies that could pose a health and safety risk for consumers; and

(b) Circumstances that could increase the risk of institutionalization without the use of overtime.

(4) An individual provider may be authorized to work more than forty hours in a workweek:

(a) If the department established a permanent workweek limit between forty and one-quarter hours and sixty-five hours for an individual provider, based upon work performed by the individual provider in January 2016, as modified by an appeal, if any; or

(b) For required training under RCW 74.39A.074, 74.39A.076, and 74.39A.341, and for required travel time between clients.

(5) The cost of overtime incurred under subsections (2)(a) and (b) and (4) of this section shall be included in a

consumer directed employer labor rate determined in accordance with RCW 74.39A.530. The following overtime costs shall not be included in the labor rate under RCW 74.39A.530:

(a) Costs incurred under subsection (2)(c) of this section;

(b) Costs incurred by an employee of a consumer directed employer for services provided to an individual who is not a consumer;

(c) Costs for services not authorized under this chapter; and

(d) Overtime costs incurred because an employee of a consumer directed employer performed work:

(i) For both a consumer and an individual who is not a consumer; or

(ii) Worked as both an individual provider and as an employee of the licensed home care agency affiliated with the consumer directed employer.

(6) Expenditures for hours in excess of forty hours each workweek under subsections (1) and (2) of this section shall not exceed eight and one-fourth percent of the total actual authorized personal care hours for the fiscal year as projected by the caseload forecast council.

(7) The caseload forecast council may adopt a temporary adjustment to the eight and one-fourth percent of the total average in-home personal care hours projection for that fiscal year, up to a maximum of ten percent, if it finds a higher percentage of overtime hours is necessitated by a shortage of individual providers to provide adequate client care, taking into consideration factors including the criteria in subsection (1) of this section and rules adopted by the department. If the council elects to temporarily increase the limit, it may do so only upon a majority vote of the council.

(8) The department shall prepare expenditure reports beginning September 1, 2018, and on September 1st every year thereafter. The report shall include the results of the department's monitoring of authorizations and costs of hours in excess of forty hours each workweek. If the department determines that the annual expenditures will exceed the limitation established in subsection (3) of this section, the department shall take those actions necessary to ensure compliance with the limitation.

(9) The expenditure reports must be submitted to the legislative fiscal committees and the joint legislative-executive overtime oversight task force. The joint legislative-executive overtime oversight task force members are as follows:

(a) Two members from each of the two largest caucuses of the senate, appointed by the respective caucus leaders.

(b) Two members from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives.

(c) The governor shall appoint members representing the department of social and health services and the office of financial management.

(d) The governor shall appoint two members representing individual providers and two members representing consumers receiving personal care or respite care services from an individual provider.

(10) The task force shall meet when the department determines that it is projected to or is exceeding the expenditure limits established in subsection (6) of this section but may meet more frequently as desired by the task force. The task force shall choose cochairs, one from among the legislative members and one from among the executive branch members.

(11) The department may take appropriate corrective action, up to and including termination of an individual provider's contract, when the individual provider works more than his or her workweek limit in any given workweek. [2018 c 278 § 26.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

74.39A.530 Consumer directed employer program—Labor and administrative rates—Rate-setting board—Funding process. If the department contracts with a consumer directed employer:

(1) In addition to overtime and compensable travel time set forth in RCW 74.39A.525, the initial labor rates shall be paid as described in the most recent collective bargaining agreement between the governor and the service employees international union 775, plus the hourly roll-up costs of any additional legally required benefits or labor costs, until subsequent rates can be established in accordance with this section.

(2) A fourteen person rate-setting board is established to evaluate and propose changes in the rates paid to the consumer directed employer.

(a) The following four members shall be voting members:

(i) One representative from the governor's office;

(ii) One representative from the department;

(iii) One representative from the consumer directed employer; and

(iv) One designee from the exclusive bargaining representative of individual providers or, in the absence of an exclusive bargaining representative, a designee from the consumer directed employer workforce chosen by the employees of the consumer directed employer.

(b) The following nine members of the board shall be nonvoting advisory members:

(i) Four legislators, one member from each caucus of the house of representatives and the senate;

(ii) One representative from the state council on aging, appointed by the governor;

(iii) One representative of an organization representing people with intellectual or developmental disabilities appointed by the governor;

(iv) One representative of an organization representing people with physical disabilities appointed by the governor;

(v) One representative from the licensed home care agency industry chosen by the state's largest association of home care agencies that primarily serves state-funded clients; and

(vi) One home care worker chosen by the state's largest organization of home care workers.

(c) The governor's appointments shall be made by April 1st in even-numbered years.

(3) Beginning in the year following the establishment of the initial rate under subsection (1) of this section, and in every even-numbered year thereafter, the rate-setting board shall attempt to determine a proposed labor rate, including a specific amount for health benefits by considering the factors listed in RCW 41.56.465(5). In addition, the rate-setting

board shall attempt to determine an administrative rate for the consumer directed employer.

(4) At the commencement of the board's rate-setting activities, the four voting members must first attempt to select a fifth voting member, who will chair the rate-setting panel and will cast a tie-breaking vote if the four voting members identified in subsection (2) of this section are unable to reach an agreement on the labor rate.

(a) On the first occasion that the four voting members fail to select a tie-breaking member by a majority vote, the fifth member will be selected as follows:

(i) The panel member representing the governor's office shall request a list of five qualified arbitrators from the federal mediation and conciliation service.

(ii) If a majority of the voting members of the panel cannot agree on the selection of a neutral arbitrator from the list, the representative from the consumer directed employer will strike a name from the list first. The representative from the governor's office shall then strike a name from the list, the designee from the exclusive bargaining representative or, in the absence of an exclusive bargaining representative, the designee from the consumer directed employer workforce shall strike a name from the list, and finally the representative from the department shall strike a name from the list.

(iii) The name of the arbitrator remaining after the final strike shall be the fifth member of the panel.

(iv) If that person is not willing or available to be the fifth panel member, the second to last person remaining on the list shall be asked to be the fifth panel member. If the second to last person is not willing or available, the third to last person shall be asked to be the fifth member. This process of selecting an arbitrator shall be continued until a fifth member of the panel is appointed.

(b) On the next occasion that the four voting members fail to select a fifth tie-breaking member by a majority vote, the fifth member will be selected using the method described in (a) of this subsection except that the order of panel members striking names from the list, described in (a)(ii) of this subsection, shall be reversed.

(c) On each successive occasion that the four voting members fail to select a fifth tie-breaking member by a majority vote, the order of panel members striking names from the list will continue to alternate between the order described in (a)(ii) and (b) of this subsection.

(5) If an agreement on a proposed labor rate, an administrative rate, or both, is not reached by a majority of the voting members of the rate-setting board prior to July 1st, then:

(a) The labor rate shall be determined by the vote of the fifth member, who was selected in accordance with subsections (2) and (4) of this section; and

(b) The administrative rate shall be determined by the department.

(6) After the rates have been determined in accordance with subsections (3) through (5) of this section, they shall be submitted to the director of the office of financial management by October 1st prior to the legislative session during which the requests are to be considered for review. If the director of the office of financial management certifies them as being feasible financially for the state, the governor shall include a request for funds necessary to implement the proposed rates as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. The legislature shall approve or reject the request for funds as a whole.

(7) If the legislature rejects the request under subsection (5) of this section, the matter shall return to the rate-setting board established under this section for further consideration. Until the legislature approves a request for funds under this section, the current labor rate shall stay in effect.

(8) The labor rate approved by the legislature shall be an hourly rate paid to the consumer directed employer. The labor rate shall be used exclusively for paying the wages, associated taxes, and benefits of individual providers. The consumer directed employer shall have full discretion to set wages and benefits for individual providers, except as provided in: (a) Subsection (9) of this section; (b) any specific legislative appropriation requirement; or (c) a collective bargaining agreement, if applicable.

(9) The labor rate shall include a specific hourly amount that the consumer directed employer may use only for health benefits for individual providers.

(10) For the purpose of this section:

(a) "Labor rate" is defined as that portion of the consumer directed employer's hourly rate that is to be used by the consumer directed employer to compensate its workers, including wages, benefits, and any associated taxes.

(b) "Administrative rate" is defined as that portion of the consumer directed employer's hourly rate that is to be used by the consumer directed employer to perform its administrative duties. [2018 c 278 § 27.]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

74.39A.800 Changes to agreements—Performance of duties. (1) If any provision of chapter 1, Laws of 2012 triggers changes to an agreement reached under RCW 74.39A.300, the changes must go into effect immediately without need for legislative approval.

(2) The requirements contained in RCW 74.39A.300 and chapter 1, Laws of 2012 constitute ministerial, mandatory, and nondiscretionary duties. Failure to fully perform such duties constitutes a violation of chapter 1, Laws of 2012. Any person may bring an action to require the governor or other responsible persons to perform such duties. Such action may be brought in the superior court, at the petitioner's option, for (a) Thurston county, or (b) the county of the petitioner's residence or principal place of business, or such action may be filed directly with the supreme court, which is hereby given original jurisdiction over such action. [2012 c 1 § 304 (Initiative Measure No. 1163, approved November 8, 2011).]

Intent—Findings—Performance audits—Spending limits—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

74.39A.900 Section captions—1993 c 508. Section captions as used in this act constitute no part of the law. [1993 c 508 § 10.]

74.39A.901 Conflict with federal requirements. If any part of this chapter or a collective bargaining agreement under this chapter is found by a court of competent jurisdiction 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 chapter or the agreement 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 chapter or the agreement in its application to the agencies concerned. The rules under this chapter shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2004 c 3 § 5; 1993 c 508 § 11.]

Additional notes found at www.leg.wa.gov

74.39A.903 Effective date—1993 c 508. 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 18, 1993]. [1993 c 508 § 13.]

Chapter 74.41 RCW
RESPITE CARE SERVICES

Sections

74.41.010 Legislative findings. The legislature recognizes that:

(1) Most care provided for functionally disabled adults is delivered by family members or friends who are not compensated for their services. Family involvement is a crucial element for avoiding or postponing institutionalization of the disabled adult.

(2) Family or other caregivers who provide continuous care in the home are frequently under substantial stress, physical, psychological, and financial. The stress, if unrelieved by family or community support to the caregiver, may lead to premature or unnecessary nursing home placement.

(3) Respite care and other community-based supportive services for the caregiver and for the disabled adult could relieve some of the stresses, maintain and strengthen the family structure, and postpone or prevent institutionalization.

(4) With family and friends providing the primary care for the disabled adult, supplemented by community health and social services, long-term care may be less costly than if the individual were institutionalized. [1984 c 158 § 1.]

74.41.020 Intent. It is the intent of the legislature to provide a comprehensive program of long-term care information and support, including in-home and out-of-home respite care services, for family and other unpaid caregivers who provide the daily services required when caring for adults with functional disabilities. The family caregiver long-term care information and support services shall:

(1) Provide information, relief, and support to family or other unpaid caregivers of adults with functional disabilities;

(2) Encourage family and other nonpaid individuals to provide care for adults with functional disabilities at home, and thus offer a viable alternative to placement in a long-term care facility;

(3) Ensure that respite care is made generally available on a sliding-fee basis to eligible participants in the program according to priorities established by the department;

(4) Be provided in the least restrictive setting available consistent with the individually assessed needs of the adults with functional disabilities;

(5) Include services appropriate to the needs of persons caring for individuals with dementing illnesses; and

(6) Provide unpaid family and other unpaid caregivers with services that enable them to make informed decisions about current and future care plans, solve day-to-day caregiving problems, learn essential caregiving skills, and locate services that may strengthen their capacity to provide care. [2000 c 207 § 2; 1987 c 409 § 1; 1984 c 158 § 2.]

Additional notes found at www.leg.wa.gov

74.41.030 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Family caregiver long-term care information and support services" means providing long-term care information and support services to unpaid family and other unpaid caregivers of adults with functional disabilities, including but not limited to providing: (a) Information about available public and private long-term care support services; (b) assistance in gaining access to an array of appropriate long-term care family caregiver services; (c) promotion and implementation of support groups; (d) caregiver training to assist the nonpaid caregivers in making decisions and solving challenges relating to their caregiving roles; (e) respite care services; and (f) additional supportive long-term care services that may include but not be limited to translating/interpreter services, specialized transportation, coordination of health care services, help purchasing needed supplies, durable goods, or equipment, and other forms of information and support necessary to maintain the unpaid caregiving activity.

(2) "Respite care services" means relief care for families or other caregivers of adults with functional disabilities, eligibility for which shall be determined by the department by rule. The services provide temporary care or supervision of adults with functional disabilities in substitution for the caregiver. The term includes adult day services.

(3) "Eligible participant for family caregiver long-term care information and support services" means an adult who needs substantially continuous care or supervision by reason of his or her functional disability and may be at risk of placement into a long-term care facility.

(4) "Eligible participant for respite care services" means an adult who needs substantially continuous care or supervision by reason of his or her functional disability and is also assessed as requiring placement into a long-term care facility in the absence of an unpaid family or other unpaid caregiver.

(5) "Unpaid caregiver" means a spouse, relative, or friend who has primary responsibility for the care of an adult with a functional disability and who does not receive financial compensation for the care. To be eligible for respite care

and for family caregiver support services, the caregiver is considered the client.

(6) "Adult day services" means nonmedical services to persons who live with their families, cannot be left unsupervised, and are at risk of being placed in a twenty-four-hour care facility if their families do not receive some relief from constant care.

(7) "Department" means the department of social and health services. [2000 c 207 § 3; 1987 c 409 § 2; 1984 c 158 § 3.]

Additional notes found at www.leg.wa.gov

74.41.040 Administration—Rules—Program standards. The department shall administer this chapter and shall establish such rules and standards as the department deems necessary in carrying out this chapter. The department shall not require the development of plans of care or discharge plans by nursing homes or adult family homes providing respite care service under this chapter. Assisted living facilities providing respite care services shall comply with the assessment and plan of care provisions of RCW 18.20.350.

The department shall develop standards for the respite program in conjunction with the selected area agencies on aging. The program standards shall serve as the basis for soliciting bids, entering into subcontracts, and developing sliding fee scales to be used in determining the ability of eligible participants to participate in paying for respite care. [2012 c 10 § 68; 2008 c 146 § 2; 1987 c 409 § 3; 1984 c 158 § 4.]

Application—2012 c 10: See note following RCW 18.20.010.

Findings—Intent—2008 c 146: "The legislature finds that Washingtonians sixty-five years of age and older will nearly double in the next twenty years, from eleven percent of our population today to almost twenty percent of our population in 2025. Younger people with disabilities will also require supportive long-term care services. Nationally, young people with a disability account for thirty-seven percent of the total number of people who need long-term care.

The legislature further finds that to address this increasing need, the long-term care system should support autonomy and self-determination, and support the role of informal caregivers and families. It should promote personal planning and savings combined with public support, when needed. It should also include culturally appropriate, high quality information, services, and supports delivered in a cost-effective and efficient manner.

The legislature further finds that more than fifteen percent of adults over age sixty-five in Washington state have diabetes. Current nurse delegation statutes limit the ability of elderly and disabled persons with diabetes to remain in their own homes or in other home-like long-term care settings. It is the intent of the legislature to modify nurse delegation statutes to enable elderly persons and persons with disabilities who have diabetes to continue to reside in their own home or other home-like settings.

The legislature further finds that the long-term care system should utilize evidence-based practices for the prevention and management of chronic disease to improve the general health of Washingtonians over their lifetime and reduce health care and long-term care costs related to ineffective chronic care management." [2008 c 146 § 1.]

Additional notes found at www.leg.wa.gov

74.41.050 Family caregiver long-term care information and support services—Respite services, evaluation of need, caregiver abilities. The department shall contract with area agencies on aging or other appropriate agencies to conduct family caregiver long-term care information and support services to the extent of available funding. The responsibilities of the agencies shall include but not be limited to: (1) Administering a program of family caregiver long-term care information and support services; (2) negotiating rates of payment, administering sliding-fee scales to enable eligible participants to participate in paying for respite care, and arranging for respite care information, training, and other support services; and (3) developing an evidence-based tailored caregiver assessment and referral tool. In evaluating the need for respite services, consideration shall be given to the mental and physical ability of the caregiver to perform necessary caregiver functions. [2008 c 146 § 4; 2000 c 207 § 4; 1989 c 427 § 8; 1987 c 409 § 4; 1984 c 158 § 5.]

Findings—Intent—Severability—2008 c 146: See notes following RCW 74.41.040.

Additional notes found at www.leg.wa.gov

74.41.060 Respite care program—Criteria. The department shall insure that the respite care program is designed to meet the following criteria:

(1) Make maximum use of services which provide care to the greatest number of eligible participants with the fewest number of staff consistent with adequate care;

(2) Provide for use of one-on-one care when necessary;

(3) Provide for both day care and overnight care;

(4) Provide personal care to continue at the same level which the caregiver ordinarily provides to the eligible participant; and

(5) Provide for the utilization of family home settings. [1984 c 158 § 6.]

74.41.070 Family caregiver long-term care information and support services—Data. The area agencies on aging administering family caregiver long-term care information and support services shall maintain data which indicates demand for family caregiver long-term care information and support services. [2000 c 207 § 5; 1998 c 245 § 151; 1987 c 409 § 5; 1984 c 158 § 7.]

Additional notes found at www.leg.wa.gov

74.41.080 Health care practitioners and facilities not impaired. Nothing in this chapter shall impair the practice of any licensed health care practitioner or licensed health care facility. [1984 c 158 § 8.]

74.41.090 Entitlement not created. Nothing in this chapter creates or provides any individual with an entitlement to services or benefits. It is the intent of the legislature that services under this chapter shall be made available only to the extent of the availability and level of appropriation made by the legislature. [1987 c 409 § 6.]

74.41.900 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 § 182.]

Chapter 74.42 RCW
NURSING HOMES—RESIDENT CARE, OPERATING STANDARDS

Sections

Effective date—Chapter 74.42 RCW: See RCW 74.42.920.

74.42.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of social and health services and the department's employees.

(2) "Direct care staff" means the staffing domain identified and defined in the center for medicare and medicaid service's five-star quality rating system and as reported through the center for medicare and medicaid service's payroll-based journal. For purposes of calculating hours per resident day minimum staffing standards for facilities with sixty-one or more licensed beds, the director of nursing services classification (job title code five), as identified in the center[s] for medicare and medicaid service's payroll-based journal, shall not be used. For facilities with sixty or fewer beds the director of nursing services classification (job title code five) shall be included in calculating hours per resident day minimum staffing standards.

(3) "Facility" refers to a nursing home as defined in RCW 18.51.010.

(4) "Geriatric behavioral health worker" means a person with a bachelor's or master's degree in social work, behavioral health, or other related areas, or a person who has received specialized training devoted to mental illness and treatment of older adults.

(5) "Licensed practical nurse" means a person licensed to practice practical nursing under chapter 18.79 RCW.

(6) "Medicaid" means Title XIX of the Social Security Act enacted by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79 Stat. 343), as amended.

(7) "Nurse practitioner" means a person licensed to practice advanced registered nursing under chapter 18.79 RCW.

(8) "Nursing care" means that care provided by a registered nurse, an advanced registered nurse practitioner, a licensed practical nurse, or a nursing assistant in the regular performance of their duties.

(9) "Physician" means a person practicing pursuant to chapter 18.57 or 18.71 RCW, including, but not limited to, a physician employed by the facility as provided in chapter 18.51 RCW.

(10) "Physician assistant" means a person practicing pursuant to chapter 18.57A or 18.71A RCW.

(11) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience specified by the department.

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience.

(c) A mental health professional as defined in chapter 71.05 RCW.

(d) An intellectual disabilities professional who is a qualified therapist or a therapist approved by the department and has specialized training or one year experience in treating or working with persons with intellectual or developmental disabilities.

(e) An occupational therapist who is a graduate of a program in occupational therapy or who has equivalent education or training.

(f) A physical therapist as defined in chapter 18.74 RCW.

(g) A social worker as defined in RCW 18.320.010(2).

(h) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has equivalent education and clinical experience.

(12) "Registered nurse" means a person licensed to practice registered nursing under chapter 18.79 RCW.

(13) "Resident" means an individual residing in a nursing home, as defined in RCW 18.51.010. [2019 c 301 § 3; 2019 c 12 § 1; 2017 c 200 § 2. Prior: 2016 c 131 § 3; prior: 2011 c 228 § 2; 2011 c 89 § 19; prior: 2010 c 94 § 27; 1994 sp.s. c 9 § 750; 1993 c 508 § 4; 1979 ex.s. c 211 § 1.]

Reviser's note: This section was amended by 2019 c 12 § 1 and by 2019 c 301 § 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).

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

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

Additional notes found at www.leg.wa.gov

74.42.020 Minimum standards. The standards in RCW 74.42.030 through 74.42.570 are the minimum standards for facilities licensed under chapter 18.51 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 any nursing home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or for any nursing home 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. [1995 1st sp.s. c 18 § 68; 1982 c 120 § 1; 1980 c 184 § 6; 1979 ex.s. c 211 § 2.]

Additional notes found at www.leg.wa.gov

74.42.030 Resident to receive statement of rights, rules, services, and charges. Each resident or guardian or legal representative, if any, shall be fully informed and receive in writing, in a language the resident or his or her representative understands, the following information:

(1) The resident's rights and responsibilities in the facility;

(2) Rules governing resident conduct;

(3) Services, items, and activities available in the facility; and

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

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

The written information provided by the facility pursuant to this section, and the terms of any admission contract executed between the facility and an individual seeking admission to the facility, must be consistent with the requirements of this chapter and chapter 18.51 RCW and, for facilities certified under medicaid or medicare, with the applicable federal requirements. [1997 c 392 § 212; 1979 ex.s. c 211 § 3.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

74.42.040 Resident's rights regarding medical condition, care, and treatment. The facility shall insure that each resident and guardian, if any:

(1) Is fully informed by a physician about his or her health and medical condition unless the physician decides that informing the resident is medically contraindicated and the physician documents this decision in the resident's record;

(2) Has the opportunity to participate in his or her total care and treatment;

(3) Has the opportunity to refuse treatment; and

(4) Gives informed, written consent before participating in experimental research. [1979 ex.s. c 211 § 4.]

74.42.050 Residents to be treated with consideration, respect—Complaints. (1) Residents shall be treated with consideration, respect, and full recognition of their dignity and individuality. Residents shall be encouraged and assisted in the exercise of their rights as residents of the facility and as citizens.

(2) A resident or guardian, if any, may submit complaints or recommendations concerning the policies of the facility to the staff and to outside representatives of the resident's choice. No facility may restrain, interfere, coerce, discriminate, or retaliate in any manner against a resident who submits a complaint or recommendation. [1979 ex.s. c 211 § 5.]

74.42.055 Discrimination against medicaid recipients prohibited. (1) The purpose of this section is to prohibit discrimination against medicaid recipients by nursing homes which have contracted with the department to provide skilled or intermediate nursing care services to medicaid recipients.

(2) A nursing facility shall readmit a resident, who has been hospitalized or on therapeutic leave, immediately to the first available bed in a semiprivate room if the resident:

(a) Requires the services provided by the facility; and

(b) Is eligible for medicaid nursing facility services.

(3) It shall be unlawful for any nursing home which has a medicaid contract with the department:

(a) To require, as a condition of admission, assurance from the patient or any other person that the patient is not eligible for or will not apply for medicaid;

(b) To deny or delay admission or readmission of a person to a nursing home because of his or her status as a medicaid recipient;

(c) To transfer a patient, except from a private room to another room within the nursing home, because of his or her status as a medicaid recipient;

(d) To transfer a patient to another nursing home because of his or her status as a medicaid recipient;

(e) To discharge a patient from a nursing home because of his or her status as a medicaid recipient; or

(f) To charge any amounts in excess of the medicaid rate from the date of eligibility, except for any supplementation permitted by the department pursuant to RCW 18.51.070.

(4) Any nursing home which has a medicaid contract with the department shall maintain one list of names of persons seeking admission to the facility, which is ordered by the date of request for admission. This information shall be retained for one year from the month admission was requested. However, except as provided in subsection (2) of this section, a nursing facility is permitted to give preferential admission to individuals who seek admission from an assisted living facility, licensed under chapter 18.20 RCW, or from independent retirement housing, provided the nursing facility is owned by the same entity that owns the assisted living facility or independent housing which are located within the same proximate geographic area; and provided further, the purpose of such preferential admission is to allow continued provision of: (a) Culturally or faith-based services, or (b) services provided by a continuing care retirement community as defined in RCW 70.38.025.

(5) The department may assess monetary penalties of a civil nature, not to exceed three thousand dollars for each violation of this section.

(6) Because it is a matter of great public importance to protect senior citizens who need medicaid services from discriminatory treatment in obtaining long-term health care, any violation of this section shall be construed for purposes of the application of the consumer protection act, chapter 19.86 RCW, to constitute an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce.

(7) It is not an act of discrimination under this chapter to refuse to admit a patient if admitting that patient would prevent the needs of the other patients residing in that facility from being met at that facility, or if the facility's refusal is consistent with subsection (4) of this section. [2012 c 10 § 69; 2004 c 34 § 1; 1987 c 476 § 30; 1985 c 284 § 3.]

Application—2012 c 10: See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

74.42.056 Department assessment of medicaid eligible individuals—Requirements. A nursing facility shall not admit any individual who is medicaid eligible unless that individual has been assessed by the department. Appropriate hospital discharge shall not be delayed pending the assessment.

To ensure timely hospital discharge of medicaid eligible persons, the date of the request for a department long-term care assessment, or the date that nursing home care actually begins, whichever is later, shall be deemed the effective date of the initial service and payment authorization. The department shall respond promptly to such requests.

A nursing facility admitting an individual without a request for a department assessment shall not be reimbursed by the department and shall not be allowed to collect payment from a medicaid eligible individual for any care rendered before the date the facility makes a request to the department for an assessment. The date on which a nursing facility makes a request for a department long-term care assessment, or the date that nursing home care actually begins, whichever is later, shall be deemed the effective date of initial service and payment authorization for admissions regardless of the source of referral.

A medicaid eligible individual residing in a nursing facility who is transferred to an acute care hospital shall not be required to have a department assessment under this section prior to returning to the same or another nursing facility. [1995 1st sp.s. c 18 § 7.]

Additional notes found at www.leg.wa.gov

74.42.057 Notification regarding resident likely to become medicaid eligible. If a nursing facility has reason to know that a resident is likely to become financially eligible for medicaid benefits within one hundred eighty days, the nursing facility shall notify the patient or his or her representative and the department. The department may:

(1) Assess any such resident to determine if the resident prefers and could live appropriately at home or in some other community-based setting; and

(2) Provide case management services to the resident. [1995 1st sp.s. c 18 § 8.]

Additional notes found at www.leg.wa.gov

74.42.058 Department case management services. (1) To the extent of available funding, the department shall provide case management services to assist nursing facility residents, in conjunction and partnership with nursing facility staff. The purpose of the case management services is to assist residents and their families to assess the appropriateness and availability of home and community services that could meet the resident's needs so that the resident and family can make informed choices.

(2) To the extent of available funding, the department shall provide case management services to nursing facility residents who are:

(a) Medicaid funded;

(b) Dually medicaid and medicare eligible;

(c) Medicaid applicants; and

(d) Likely to become financially eligible for medicaid within one hundred eighty days, pursuant to RCW 74.42.057. [1995 1st sp.s. c 18 § 9.]

Additional notes found at www.leg.wa.gov

74.42.060 Management of residents' financial affairs. The facility shall allow a resident or the resident's guardian to manage the resident's financial affairs. The facility may assist a resident in the management of his or her financial affairs if the resident requests assistance in writing and the facility complies with the recordkeeping requirements of RCW 74.42.130 and the provisions of *chapter . . . (Senate Bill No. 2335), Laws of 1979. [1979 ex.s. c 211 § 6.]

***Reviser's note:** Senate Bill No. 2335 was not enacted during the 1979 legislative sessions. A similar bill was enacted in 1980 and became 1980 c 177, which is codified primarily in chapter 74.46 RCW.

74.42.070 Privacy. Residents shall be given privacy during treatment and care of personal needs. Residents who are spouses or domestic partners shall be given privacy during visits with their spouses or their domestic partners. If both spouses or both domestic partners are residents of the facility, the facility shall permit the spouses or domestic partners to share a room, unless medically contraindicated. [2008 c 6 § 305; 1979 ex.s. c 211 § 7.]

Additional notes found at www.leg.wa.gov

74.42.080 Confidentiality of records. Residents' records, including information in an automatic data bank, shall be treated confidentially. The facility shall not release information from a resident's record to a person not otherwise authorized by law to receive the information without the resident's or the resident's guardian's written consent. [1979 ex.s. c 211 § 8.]

74.42.090 Work tasks by residents. No resident may be required to perform services for the facility; except that a resident may be required to perform work tasks specified or included in the comprehensive plan of care. [1979 ex.s. c 211 § 9.]

74.42.100 Personal mail. The facility shall not open the personal mail that residents send or receive. [1979 ex.s. c 211 § 10.]

74.42.110 Freedom of association—Limits. Residents shall be allowed to communicate, associate, meet privately with individuals of their choice, and participate in social, religious, and community group activities unless this infringes on the rights of other residents. [1979 ex.s. c 211 § 11.]

74.42.120 Personal possessions. The facility shall allow residents to have personal possessions as space or security permits. [1979 ex.s. c 211 § 12.]

74.42.130 Individual financial records. The facility shall keep a current, written financial record for each resident. The record shall include written receipts for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or for the resident. The resident or guardian and the resident's family shall have access to the financial record. [1979 ex.s. c 211 § 13.]

74.42.140 Prescribed plan of care—Treatment, medication, diet services. The facility shall care for residents by providing residents with authorized medical services which shall include treatment, medication, and diet services, and any other services contained in the comprehensive plan of care or otherwise prescribed by the attending physician. [1979 ex.s. c 211 § 14.]

74.42.150 Plan of care—Goals—Program—Responsibilities—Review. (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 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. [1980 c 184 § 7; 1979 ex.s. c 211 § 15.]

74.42.160 Nursing care. The facility shall provide the nursing care required for the classification given each resident. The nursing care shall help each resident to achieve and maintain the highest possible degree of function, self-care, and independence to the extent medically possible. [1979 ex.s. c 211 § 16.]

74.42.170 Rehabilitative services. (1) The facility shall provide rehabilitative services itself or arrange for the provision of rehabilitative services with qualified outside resources for each resident whose comprehensive plan of care requires the provision of rehabilitative services.

(2) The rehabilitative service personnel shall be qualified therapists, qualified therapists' assistants, or mental health professionals. Other support personnel under appropriate supervision may perform the duties of rehabilitative service personnel.

(3) The rehabilitative services shall be designed to maintain and improve the resident's ability to function independently; prevent, as much as possible, advancement of progressive disabilities; and restore maximum function. [1979 ex.s. c 211 § 17.]

74.42.180 Social services. (1) The facility shall provide social services, or arrange for the provision of social services with qualified outside resources, for each resident whose comprehensive plan of care requires the provision of social services.

(2) The facility shall designate one staff member qualified by training or experience to be responsible for arranging for social services in the facility or with qualified outside resources and integrating social services with other elements of the plan of care. [1979 ex.s. c 211 § 18.]

74.42.190 Activities program—Recreation areas, equipment. The facility shall have an activities program designed to encourage each resident to maintain normal activity and help each resident return to self care. A staff member qualified by experience or training in directing

group activities shall be responsible for the activities program. The facility shall provide adequate recreation areas with sufficient equipment and materials to support the program. [1979 ex.s. c 211 § 19.]

74.42.200 Supervision of health care by physician—When required. 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 shall see the resident whenever necessary, and as required and/or consistent with state and federal regulations. [1980 c 184 § 8; 1979 ex.s. c 211 § 20.]

74.42.210 Pharmacist services. The facility shall either employ a licensed pharmacist responsible for operating the facility's pharmacy or have a written agreement with a licensed pharmacist who will advise the facility on ordering, storage, administration, disposal, and recordkeeping of drugs and biologicals. [1979 ex.s. c 211 § 21.]

74.42.220 Contracts for professional services from outside the agency. (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) All contracts for these services shall require the standards in RCW 74.42.010 through 74.42.570 to be met. [1980 c 184 § 9; 1979 ex.s. c 211 § 22.]

74.42.225 Self-medication programs for residents—Educational program—Implementation. 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. [1980 c 184 § 18.]

74.42.230 Physician or authorized practitioner to prescribe medication—Communication of order by licensed nurse, pharmacist, or another physician. (1) The resident's attending or staff physician or authorized practitioner approved by the attending physician shall order all medications for the resident. The order may be oral or written and shall continue in effect until discontinued by a physician or other authorized prescriber, unless the order is specifically limited by time. An "authorized practitioner," as used in this section, is a registered nurse under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the committee of osteopathic examiners, a physician assistant under chapter 18.71A RCW when authorized by the Washington medical commission, or a pharmacist under chapter 18.64 RCW when authorized by the pharmacy quality assurance commission.

(2) An oral order shall be given only to a licensed nurse, pharmacist, or another physician. The oral order shall be recorded and physically or electronically signed immediately by the person receiving the order. The attending physician shall sign the record of the oral order in a manner consistent with good medical practice.

(3) A licensed nurse, pharmacist, or another physician receiving and recording an oral order may, if so authorized by the physician or authorized practitioner, communicate that order to a pharmacy on behalf of the physician or authorized practitioner. The order may be communicated verbally by telephone, by facsimile manually signed by the person receiving the order pursuant to subsection (2) of this section, or by electronic transmission pursuant to RCW 69.41.055. The communication of a resident's order to a pharmacy by a licensed nurse, pharmacist, or another physician acting at the prescriber's direction has the same force and effect as if communicated directly by the delegating physician or authorized practitioner. Nothing in this provision limits the authority of a licensed nurse, pharmacist, or physician to delegate to an authorized agent, including but not limited to delegation of operation of a facsimile machine by credentialed facility staff, to the extent consistent with his or her professional license. [2019 c 55 § 20; 2016 c 148 § 9; 1994 sp.s. c 9 § 751; 1982 c 120 § 2; 1979 ex.s. c 211 § 23.]

Additional notes found at www.leg.wa.gov

74.42.240 Administering medication. (1) No staff member may administer any medication to a resident unless the staff member is licensed to administer medication: PROVIDED, That nothing herein shall be construed as prohibiting graduate nurses or student nurses from administering medications when permitted to do so under chapter 18.79 RCW and rules adopted thereunder.

(2) The facility may only allow a resident to give himself or herself medication with the attending physician's permission.

(3) Medication shall only be administered to or used by the resident for whom it is ordered. [1994 sp.s. c 9 § 752; 1989 c 372 § 5; 1979 ex.s. c 211 § 24.]

Additional notes found at www.leg.wa.gov

74.42.250 Medication stop orders—Procedure for persons with developmental disabilities. (1) When the physician's order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician that the medication will be stopped at a date certain unless the medication is ordered continued by the physician. The facility shall so notify the physician every thirty days.

(2) A facility for the developmentally disabled shall have an automatic stop order on all drugs, unless such stoppage will place the patient in jeopardy. [1979 ex.s. c 211 § 25.]

74.42.260 Drug storage, security, inventory. (1) The facility shall store drugs under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Poisons, drugs used externally, and drugs taken

internally shall be stored on separate shelves or in separate cabinets at all locations. When medication is stored in a refrigerator containing other items, the medication shall be kept in a separate compartment with proper security. All drugs shall be kept under lock and key unless an authorized individual is in attendance.

(2) The facility shall meet the drug security requirements of federal and state laws that apply to storerooms, pharmacies, and living units.

(3) If there is a drug storeroom separate from the pharmacy, the facility shall keep a perpetual inventory of receipts and issues of all drugs from that storeroom. [1979 ex.s. c 211 § 26.]

74.42.270 Drug disposal. Any drug that is discontinued or outdated and any container with a worn, illegible, or missing label shall be properly disposed. [1979 ex.s. c 211 § 27.]

74.42.280 Adverse drug reaction. Medication errors and adverse drug reactions shall be recorded and reported immediately to the practitioner who ordered the drug. The facility shall report adverse drug reactions consistent with good medical practice. [1979 ex.s. c 211 § 28.]

74.42.285 Immunizations—Rules. (1) Long-term care facilities shall:

(a) Provide access on-site or make available elsewhere for all residents to obtain the influenza virus immunization on an annual basis;

(b) Require that each resident, or the resident's legal representative, upon admission to the facility, be informed verbally and in writing of the benefits of receiving the influenza virus immunization and, if not previously immunized against pneumococcal disease, the benefits of the pneumococcal immunization.

(2) As used in this section, "long-term care facility" is limited to nursing homes licensed under chapter 18.51 RCW.

(3) The department of social and health services shall adopt rules to implement this section.

(4) This section and rules adopted under this section shall not apply to nursing homes conducted for those who rely exclusively upon treatment by nonmedical religious healing methods, including prayer. [2002 c 256 § 2.]

Intent—Findings—2002 c 256: "It is the intent of the legislature to ensure that long-term care facilities are safe.

(1) The long-term care resident immunization act is intended to:

(a) Prevent and reduce the occurrence and severity of the influenza virus and pneumococcal disease by increasing the use of immunizations licensed by the food and drug administration;

(b) Avoid pain, suffering, and deaths that may result from the influenza virus and pneumococcal disease;

(c) Improve the well-being and quality of life of residents of long-term care facilities; and

(d) Reduce avoidable costs associated with treating the influenza virus and pneumococcal disease.

(2) The legislature finds that:

(a) Recent studies show that it is important to immunize older citizens against the influenza virus and pneumococcal disease;

(b) The centers for disease control and prevention recommend individuals living in long-term care facilities and those over age sixty-five receive immunizations against the influenza virus and pneumococcal disease;

(c) The influenza virus and pneumococcal disease have been identified as leading causes of death for citizens over age sixty-five; and

(d) Immunizations licensed by the food and drug administration are readily available and effective in reducing and preventing the severity of the influenza virus and pneumococcal disease." [2002 c 256 § 1.]

Additional notes found at www.leg.wa.gov

74.42.290 Meal intervals—Food handling—Utensils—Disposal. (1) The facility shall serve at least three meals, or their equivalent, daily at regular times with not more than fourteen hours between a substantial evening meal and breakfast on the following day and not less than ten hours between breakfast and a substantial evening meal on the same day.

(2) Food shall be procured, stored, transported, and prepared under sanitary conditions in compliance with state and local regulations.

(3) Food of an appropriate quantity at an appropriate temperature shall be served in a form consistent with the needs of the resident;

(4) Special eating equipment and utensils shall be provided for residents who need them; and

(5) Food served and uneaten shall be discarded. [1979 ex.s. c 211 § 29.]

74.42.300 Nutritionist—Menus, special diets. (1) The facility shall have a staff member trained or experienced in food management and nutrition responsible for planning menus that meet the requirements of subsection (2) of this section and supervising meal preparation and service to insure that the menu plan is followed.

(2) The menu plans shall follow the orders of the resident's physician.

(3) The facility shall:

(a) Meet the nutritional needs of each resident;

(b) Have menus written in advance;

(c) Provide a variety of foods at each meal;

(d) Provide daily and weekly variations in the menus; and

(e) Adjust the menus for seasonal changes.

(4) If the facility has residents who require medically prescribed special diets, the menus for those residents shall be planned by a professionally qualified dietitian or reviewed and approved by the attending physician. The preparation and serving of meals shall be supervised to insure that the resident accepts the special diet. [1979 ex.s. c 211 § 30.]

74.42.310 Staff duties at meals. (1) A facility shall have sufficient personnel to supervise the residents, direct self-help dining skills, and to insure that each resident receives enough food.

(2) A facility shall provide table service for all residents, including residents in wheelchairs, who are capable and willing to eat at tables. [1980 c 184 § 10; 1979 ex.s. c 211 § 31.]

74.42.320 Sanitary procedures for food preparation. Facilities shall have effective sanitary procedures for the food preparation staff including procedures for cleaning food preparation equipment and food preparation areas. [1979 ex.s. c 211 § 32.]

74.42.330 Food storage. The facility shall store dry or staple food items at an appropriate height above the floor in a

ventilated room not subject to sewage or waste water backflow or contamination by condensation, leakage, rodents or vermin. Perishable foods shall be stored at proper temperatures to conserve nutritive values. [1979 ex.s. c 211 § 33.]

74.42.340 Administrative support—Purchasing—Inventory control. (1) The facility shall provide adequate 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) Train and assist personnel to do purchase, supply, and property control functions. [1980 c 184 § 11; 1979 ex.s. c 211 § 34.]

74.42.350 Organization chart. The facility shall have and keep current an organization chart showing:

(1) The major operating programs of the facility;

(2) The staff divisions of the facility;

(3) The administrative personnel in charge of the programs and divisions; and

(4) The lines of authority, responsibility, and communication of administrative personnel. [1979 ex.s. c 211 § 35.]

74.42.360 Adequate staff—Minimum staffing standards—Exceptions—Definition. (1) The facility shall have staff on duty twenty-four hours daily sufficient in number and qualifications to carry out the provisions of RCW 74.42.010 through 74.42.570 and the policies, responsibilities, and programs of the facility.

(2) The department shall institute minimum staffing standards for nursing homes. Beginning July 1, 2016, facilities must provide a minimum of 3.4 hours per resident day of direct care. Direct care staff has the same meaning as defined in RCW 74.42.010. The minimum staffing standard includes the time when such staff are providing hands-on care related to activities of daily living and nursing-related tasks, as well as care planning. The legislature intends to increase the minimum staffing standard to 4.1 hours per resident day of direct care, but the effective date of a standard higher than 3.4 hours per resident day of direct care will be identified if and only if funding is provided explicitly for an increase of the minimum staffing standard for direct care.

(a) The department shall establish in rule a system of compliance of minimum direct care staffing standards by January 1, 2016. Oversight must be done at least quarterly using the center for medicare and medicaid service's payroll-based journal and nursing home facility census and payroll data.

(b) The department shall establish in rule by January 1, 2016, a system of financial penalties for facilities out of compliance with minimum staffing standards. No monetary penalty may be issued during the implementation period of July 1, 2016, through September 30, 2016. If a facility is found noncompliant during the implementation period, the department shall provide a written notice identifying the staffing deficiency and require the facility to provide a sufficiently detailed correction plan to meet the statutory minimum staffing levels. Monetary penalties begin October 1, 2016. Monetary penalties must be established based on a formula that calculates the cost of wages and benefits for the missing staff hours. If a facility meets the requirements in subsection (3) or (4) of this section, the penalty amount must be based solely on the wages and benefits of certified nurse aides. The first monetary penalty for noncompliance must be at a lower amount than subsequent findings of noncompliance. Monetary penalties established by the department may not exceed two hundred percent of the wage and benefit costs that would have otherwise been expended to achieve the required staffing minimum hours per resident day for the quarter. A facility found out of compliance must be assessed a monetary penalty at the lowest penalty level if the facility has met or exceeded the requirements in subsection (2) of this section for three or more consecutive years. Beginning July 1, 2016, pursuant to rules established by the department, funds that are received from financial penalties must be used for technical assistance, specialized training, or an increase to the quality enhancement established in RCW 74.46.561.

(c) The department shall establish in rule an exception allowing geriatric behavioral health workers as defined in RCW 74.42.010 to be recognized in the minimum staffing requirements as part of the direct care service delivery to individuals who have a behavioral health condition. Hours worked by geriatric behavioral health workers may be recognized as direct care hours for purposes of the minimum staffing requirements only up to a portion of the total hours equal to the proportion of resident days of clients with a behavioral health condition identified at that facility on the most recent semiannual minimum data set. In order to qualify for the exception:

(i) The worker must:

(A) Have a bachelor's or master's degree in social work, behavioral health, or other related areas; or

(B) Have at least three years experience providing care for individuals with chronic mental health issues, dementia, or intellectual and developmental disabilities in a long-term care or behavioral health care setting; or

(C) Have successfully completed a facility-based behavioral health curriculum approved by the department under RCW 74.39A.078;

(ii) Any geriatric behavioral health worker holding less than a master's degree in social work must be directly supervised by an employee who has a master's degree in social work or a registered nurse.

(d)(i) The department shall establish a limited exception to the 3.4 hours per resident day staffing requirement for facilities demonstrating a good faith effort to hire and retain staff.

(ii) To determine initial facility eligibility for exception consideration, the department shall send surveys to facilities anticipated to be below, at, or slightly above the 3.4 hours per resident day requirement. These surveys must measure the hours per resident day in a manner as similar as possible to the centers for medicare and medicaid services' payroll-based journal and cover the staffing of a facility from October through December of 2015, January through March of 2016, and April through June of 2016. A facility must be below the

3.4 staffing standard on all three surveys to be eligible for exception consideration. If the staffing hours per resident day for a facility declines from any quarter to another during the survey period, the facility must provide sufficient information to the department to allow the department to determine if the staffing decrease was deliberate or a result of neglect, which is the lack of evidence demonstrating the facility's efforts to maintain or improve its staffing ratio. The burden of proof is on the facility and the determination of whether or not the decrease was deliberate or due to neglect is entirely at the discretion of the department. If the department determines a facility's decline was deliberate or due to neglect, that facility is not eligible for an exception consideration.

(iii) To determine eligibility for exception approval, the department shall review the plan of correction submitted by the facility. Before a facility's exception may be renewed, the department must determine that sufficient progress is being made towards reaching the 3.4 hours per resident day staffing requirement. When reviewing whether to grant or renew an exception, the department must consider factors including but not limited to: Financial incentives offered by the facilities such as recruitment bonuses and other incentives; the robustness of the recruitment process; county employment data; specific steps the facility has undertaken to improve retention; improvements in the staffing ratio compared to the baseline established in the surveys and whether this trend is continuing; and compliance with the process of submitting staffing data, adherence to the plan of correction, and any progress toward meeting this plan, as determined by the department.

(iv) Only facilities that have their direct care component rate increase capped according to RCW 74.46.561 are eligible for exception consideration. Facilities that will have their direct care component rate increase capped for one or two years are eligible for exception consideration through June 30, 2017. Facilities that will have their direct care component rate increase capped for three years are eligible for exception consideration through June 30, 2018.

(v) The department may not grant or renew a facility's exception if the facility meets the 3.4 hours per resident day staffing requirement and subsequently drops below the 3.4 hours per resident day staffing requirement.

(vi) The department may grant exceptions for a six-month period per exception. The department's authority to grant exceptions to the 3.4 hours per resident day staffing requirement expires June 30, 2018.

(3)(a) Large nonessential community providers must have a registered nurse on duty directly supervising resident care twenty-four hours per day, seven days per week.

(b) The department shall establish a limited exception process to facilities that can demonstrate a good faith effort to hire a registered nurse for the last eight hours of required coverage per day. In granting an exception, the department may consider wages and benefits offered and the availability of registered nurses in the particular geographic area. A one-year exception may be granted and may be renewable for up to three consecutive years; however, the department may limit the admission of new residents, based on medical conditions or complexities, when a registered nurse is not on-site and readily available. If a facility receives an exemption, that information must be included in the department's nursing home locator. After June 30, 2019, the department, along with a stakeholder work group established by the department, shall conduct a review of the exceptions process to determine if it is still necessary.

(4) Essential community providers and small nonessential community providers must have a registered nurse on duty directly supervising resident care a minimum of sixteen hours per day, seven days per week, and a registered nurse or a licensed practical nurse on duty directly supervising resident care the remaining eight hours per day, seven days per week.

(5) For the purposes of this section, "behavioral health condition" means one or more of the behavioral symptoms specified in section E of the minimum data set. [2019 c 12 § 2; 2017 c 200 § 3; 2016 c 131 § 2; 2015 2nd sp.s. c 2 § 7; 1979 ex.s. c 211 § 36.]

Effective date—2015 2nd sp.s. c 2: See note following RCW 74.46.501.

74.42.370 Licensed administrator. The facility shall have an administrator who is a licensed nursing home administrator under chapter 18.52 RCW. The administrator is responsible for managing the facility and implementing established policies and procedures. [1979 ex.s. c 211 § 37.]

74.42.380 Director of nursing services. (1) The facility shall have a director of nursing services. The director of nursing services shall be a registered nurse or an advanced registered nurse practitioner.

(2) The director of nursing services is responsible for:

(a) Coordinating the plan of care for each resident;

(b) Permitting only licensed personnel to administer medications: PROVIDED, That nothing herein shall be construed as prohibiting graduate nurses or student nurses from administering medications when permitted to do so under chapter 18.79 RCW and rules adopted under it: PROVIDED FURTHER, That nothing herein shall be construed as prohibiting persons certified under *chapter 18.135 RCW from practicing pursuant to the delegation and supervision requirements of *chapter 18.135 RCW and rules adopted under it; and

(c) Insuring that the licensed practical nurses and the registered nurses comply with chapter 18.79 RCW, and persons certified under *chapter 18.135 RCW comply with the provisions of that chapter and rules adopted under it. [1994 sp.s. c 9 § 753; 1989 c 372 § 6; 1985 c 284 § 2; 1979 ex.s. c 211 § 38.]

***Reviser's note:** Chapter 18.135 RCW was repealed by 2012 c 153 § 20.

Additional notes found at www.leg.wa.gov

74.42.390 Communication system. The facility shall have a communication system, including telephone service, that insures prompt contact of on-duty personnel and prompt notification of responsible personnel in an emergency. [1979 ex.s. c 211 § 39.]

74.42.400 Engineering and maintenance personnel. The facility shall have sufficient trained and experienced personnel for necessary engineering and maintenance functions. [1979 ex.s. c 211 § 40.]

74.42.410 Laundry services. The facility shall manage laundry services to meet the residents' daily clothing and linen needs. The facility shall have available at all times enough linen for the proper care and comfort of the residents. [1979 ex.s. c 211 § 41.]

74.42.420 Resident record system. The facility shall maintain an organized record system containing a record for each resident. The record shall contain:

(1) Identification information;

(2) Admission information, including the resident's medical and social history;

(3) A comprehensive plan of care and subsequent changes to the comprehensive plan of care;

(4) Copies of initial and subsequent periodic examinations, assessments, evaluations, and progress notes made by the facility and the department;

(5) Descriptions of all treatments, services, and medications provided for the resident since the resident's admission;

(6) Information about all illnesses and injuries including information about the date, time, and action taken; and

(7) A discharge summary.

Resident records shall be available to the staff members directly involved with the resident and to appropriate representatives of the department. The facility shall protect resident records against destruction, loss, and unauthorized use. The facility shall keep a resident's record after the resident is discharged as provided in RCW 18.51.300. [1979 ex.s. c 211 § 42.]

74.42.430 Written policy guidelines. 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 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. [1980 c 184 § 12; 1979 ex.s. c 211 § 43.]

***Reviser's note:** Chapter 11.88 RCW was repealed in its entirety by 2019 c 437 § 801, effective January 1, 2021.

74.42.440 Facility rated capacity not to be exceeded. The facility may only admit individuals when the facility's rated capacity will not be exceeded and when the facility has the capability to provide adequate treatment, therapy, and activities. [1979 ex.s. c 211 § 44.]

74.42.450 Residents limited to those the facility qualified to care for—Transfer or discharge of residents—Appeal of department discharge decision—Reasonable accommodation. (1) The facility shall admit as residents only those individuals whose needs can be met by:

(a) The facility;

(b) The facility cooperating with community resources; or

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

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

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

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

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

(a) The reason for the discharge;

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

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

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

(7) Before the facility transfers or discharges a resident, the facility must first attempt through reasonable accommodations to avoid the transfer or discharge unless the transfer or discharge is agreed to by the resident. The facility shall admit or retain only individuals whose needs it can safely and appropriately serve in the facility with available staff or through the provision of reasonable accommodations required by state or federal law. "Reasonable accommodations" 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. [2013 c 23 § 229; 1997 c 392 § 216; 1995 1st sp.s. c 18 § 64; 1979 ex.s. c 211 § 45.]

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

74.42.455 Transitional care management. (1) Nursing facilities may provide telephone or web-based transitional care management services to persons discharged from the facility to home for up to thirty days postdischarge.

(2) When a nursing facility provides transitional care management services, the facility must coordinate postdischarge care and service needs with in-home agencies licensed under chapter 70.127 RCW, and other authorized care providers, to promote evidence-based transition care planning. In-home service agencies and other authorized care providers, including the department, shall, when appropriate, determine resident eligibility for postdischarge care and services and coordinate with nursing facilities to plan a safe transition of the client to the home setting. When a resident is discharged to home and is without in-home care or services due to the resident's refusal of care or their ineligibility for care, the nursing facility may provide telephone or web-based transitional care management services. These services may include care coordination services, review of the discharge plan, instructions to promote compliance with the discharge plan, reminders or assistance with scheduling follow-up appointments with other health care professionals consistent with the discharge plan, and promotion of self-management of the client's health condition. Web-based transition care services may include patient education and the provision of services described in this section. They are not intended to include telehealth monitoring.

(3) If the nursing facility identifies concerns in client care that result from telephone or web-based transitional care management services, the nursing facility will notify the client's primary care physician. The nursing facility will also discuss with the client options for care or other services which may include in-home services provided by agencies licensed under chapter 70.127 RCW. [2011 c 366 § 7.]

Findings—Purpose—Conflict with federal requirements—2011 c 366: See notes following RCW 18.20.020.

74.42.460 Organization plan and procedures. The facility shall have a written staff organization plan and detailed written procedures to meet potential emergencies and disasters. The facility shall clearly communicate and periodically review the plan and procedures with the staff and residents. The plan and procedures shall be posted at suitable locations throughout the facility. [1979 ex.s. c 211 § 46.]

74.42.470 Infected employees. No employee with symptoms of a communicable disease may work in a facility. The facility shall have written guidelines that will help enforce this section. [1979 ex.s. c 211 § 47.]

74.42.480 Living areas. The facility shall design and equip the resident living areas for the comfort and privacy of each resident. [1979 ex.s. c 211 § 48.]

74.42.490 Room requirements—Waiver. 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, 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 persons with intellectual disabilities 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. [2010 c 94 § 28; 1980 c 184 § 13; 1979 ex.s. c 211 § 49.]

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

74.42.500 Toilet and bathing facilities. Toilet and bathing facilities shall be located in or near residents' rooms and shall be appropriate in number, size, and design to meet the needs of the residents. The facility shall provide an adequate supply of hot water at all times for resident use. Plumbing shall be equipped with control valves that automatically regulate the temperature of the hot water used by residents. [1979 ex.s. c 211 § 50.]

74.42.510 Room for dining, recreation, social activities—Waiver. The facility shall provide one or more areas not used for corridor traffic for dining, recreation, and social activities. A multipurpose room may be used if it is large enough to accommodate all of the activities without the activities interfering with each other: PROVIDED, That the department may waive the provisions of this section for facilities constructed prior to January 1, 1980. [1979 ex.s. c 211 § 51.]

74.42.520 Therapy area. The facility's therapy area shall be large enough and designed to accommodate the necessary equipment, conduct an examination, and provide treatment: PROVIDED, That developmentally disabled facilities shall not be subject to the provisions of this section if therapeutic services are obtained by contract with other facilities. [1979 ex.s. c 211 § 52.]

74.42.530 Isolation areas. The facility shall have isolation areas for residents with infectious diseases or make other provisions for isolating these residents. [1979 ex.s. c 211 § 53.]

74.42.540 Building requirements. (1) The facility shall be accessible to and usable by all residents, personnel, and the public, including individuals with disabilities: PRO-

VIDED, That no substantial structural changes shall be required in any facilities constructed prior to January 1, 1980.

(2) The facility shall meet the requirements of American national standards institute (ANSI) standard No. A117.1 (1961), or, if applicable, the requirements of chapter 70.92 RCW if the requirements are stricter than ANSI standard No. A117.1 (1961), unless the department waives the requirements of ANSI standard No. A117.1 (1961) under subsection (3) of this section.

(3) The department may waive, for as long as the department considers appropriate, provisions of ANSI standard No. A117.1 (1961) if:

(a) The construction plans for the facility or a part of the facility were approved by the department before March 18, 1974;

(b) The provisions would result in unreasonable hardship on the facility if strictly enforced; and

(c) The waiver does not adversely affect the health and safety of the residents. [1979 ex.s. c 211 § 54.]

74.42.550 Handrails. The facility shall have handrails that are firmly attached to the walls in all corridors used by residents: PROVIDED, That the department may waive the provisions of this section in developmentally disabled facilities. [1979 ex.s. c 211 § 55.]

74.42.560 Emergency lighting for facilities housing persons with developmental disabilities. If a living unit of a facility for the developmentally disabled houses more than fifteen residents, the living unit shall have emergency lighting with automatic switches for stairs and exits. [1979 ex.s. c 211 § 56.]

74.42.570 Health and safety requirements. The facility shall meet state and local laws, rules, regulations, and codes pertaining to health and safety. [1980 c 184 § 14; 1979 ex.s. c 211 § 57.]

74.42.580 Penalties for violation of standards. The department may deny, suspend, revoke, or refuse to renew a license or provisional license, assess monetary penalties of a civil nature, deny payment, seek receivership, order stop placement, appoint temporary management, order emergency closure, or order emergency transfer as provided in RCW 18.51.054 and 18.51.060 for violations of requirements of this chapter or, in the case of medicaid contractors, the requirements of Title XIX of the social security act, as amended, or rules adopted thereunder. Chapter 34.05 RCW shall apply to any such actions, except for receivership, and except that stop placement, appointment of temporary management, emergency closure, emergency transfer, and summary license suspension shall be effective pending any hearing, and except that denial of payment shall be effective pending any hearing when the department determines deficiencies jeopardize the health and safety of the residents or seriously limit the nursing home's capacity to provide adequate care. [1989 c 372 § 13; 1987 c 476 § 27; 1980 c 184 § 15; 1979 ex.s. c 211 § 58.]

74.42.600 Department inspections—Notice of noncompliance—Penalties—Coordination with department of health. (1) In addition to the inspection required by chapter 18.51 RCW, the department shall inspect the facility for compliance with resident rights and direct care standards of this chapter. The department may inspect any and all other provisions randomly, by exception profiles, or during complaint investigations.

(2) If the facility has not complied with all the requirements of this chapter, the department shall notify the facility in writing that the facility is in noncompliance and describe the reasons for the facility's noncompliance and the department may impose penalties in accordance with RCW 18.51.060.

(3) To avoid unnecessary duplication in inspections, the department shall coordinate with the department of health when inspecting medicaid-certified or medicare-certified, or both, long-term care beds in hospitals for compliance with Title XVIII or XIX of the social security act. [1995 c 282 § 5; 1987 c 476 § 28; 1982 c 120 § 3; 1980 c 184 § 17; 1979 ex.s. c 211 § 60.]

74.42.620 Departmental rules. The department shall adopt rules pursuant to chapter 34.05 RCW necessary to carry out the policies and provisions of RCW 74.42.010 through 74.42.570. The department shall amend or repeal any rules that are in conflict with RCW 74.42.010 through 74.42.570. [1979 ex.s. c 211 § 62.]

74.42.630 Conflict with federal requirements. If any part of chapter 184, Laws of 1980 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. [1980 c 184 § 21.]

74.42.640 Quality assurance committee. (1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, each facility may maintain a quality assurance committee that, at a minimum, includes:

(a) The director of nursing services;

(b) A physician designated by the facility; and

(c) Three other members from the staff of the facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombuds program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created for and collected and maintained by the committee.

(4) The department may request only information related to the quality assurance committee that may be necessary to determine whether a facility has a quality assurance committee and that it is operating in compliance with this section.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for imposing sanctions.

(6) If the facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with nursing facility requirements, the documents are protected as quality assurance committee documents under subsections (7) and (9) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.

(7) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance 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 care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity; and (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 their participation in the quality assurance committee activities.

(8) A quality assurance committee under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 may share information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee, with one or more other quality assurance committees created under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 for the improvement of the quality of care and services rendered to nursing facility residents. Information and documents disclosed by one quality assurance committee to another quality assurance committee 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 subsections (7) and (9) of this section, RCW 18.20.390 (6) and (8), 43.70.510(4), 70.41.200(3), and 4.24.250(1). 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.

(9) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter 42.56 RCW.

(10) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

(11) A facility operated as part of a hospital licensed under chapter 70.41 RCW may maintain a quality assurance committee in accordance with this section which shall be subject to the provisions of subsections (1) through (10) of this section or may conduct quality improvement activities for the facility through a quality improvement committee under RCW 70.41.200 which shall be subject to the provisions of RCW 70.41.200(9). [2013 c 23 § 230; 2006 c 209 § 13; 2005 c 33 § 3.]

Findings—2005 c 33: See note following RCW 18.20.390.

74.42.910 Construction—Conflict with federal requirements. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall 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 which are a necessary condition to the receipt of federal funds by the state. [1979 ex.s. c 211 § 70.]

74.42.920 Chapter 74.42 RCW suspended—Effective date delayed until January 1, 1981. Chapter 74.42 RCW shall be suspended immediately, and its effective date delayed so that it shall take effect on January 1, 1981. [1980 c 184 § 19; 1979 ex.s. c 211 § 72.]

Additional notes found at www.leg.wa.gov

Chapter 74.46 RCW
NURSING FACILITY MEDICAID PAYMENT SYSTEM

Sections

74.46.010 Short title—Purpose—Finding. (1) This chapter may be known and cited as the "nursing facility medicaid payment system."

(2) The purposes of this chapter are to set forth principles to guide the nursing facility medicaid payment system and specify the manner by which legislative appropriations for medicaid nursing facility services are to be allocated as payment rates among nursing facilities.

(3) The legislature finds that the medicaid nursing facility rates calculated under this chapter provide sufficient reimbursement to efficient and economically operating facilities and bear a reasonable relationship to costs. [2010 1st sp.s. c 34 § 1; 1998 c 322 § 1; 1980 c 177 § 1.]

Effective date—2010 1st sp.s. c 34: "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, 2010." [2010 1st sp.s. c 34 § 23.]

74.46.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Appraisal" means the process of estimating the fair market value or reconstructing the historical cost of an asset acquired in a past period as performed by a professionally designated real estate appraiser with no pecuniary interest in the property to be appraised. It includes a systematic, analytic determination and the recording and analyzing of property facts, rights, investments, and values based on a personal inspection and inventory of the property.

(2) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who are not related organizations and have adverse positions in the market place. Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter. Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(3) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

(4) "Audit" or "department audit" means an examination of the records of a nursing facility participating in the medicaid payment system, including but not limited to: The contractor's financial and statistical records, cost reports and all supporting documentation and schedules, receivables, and resident trust funds, to be performed as deemed necessary by the department and according to department rule.

(5) "Capital component" means a fair market rental system that sets a price per nursing facility bed.

(6) "Capitalization" means the recording of an expenditure as an asset.

(7) "Case mix" means a measure of the intensity of care and services needed by the residents of a nursing facility or a group of residents in the facility.

(8) "Case mix index" means a number representing the average case mix of a nursing facility.

(9) "Case mix weight" means a numeric score that identifies the relative resources used by a particular group of a nursing facility's residents.

(10) "Contractor" means a person or entity licensed under chapter 18.51 RCW to operate a medicare and medicaid certified nursing facility, responsible for operational decisions, and contracting with the department to provide services to medicaid recipients residing in the facility.

(11) "Default case" means no initial assessment has been completed for a resident and transmitted to the department by the cut-off date, or an assessment is otherwise past due for the resident, under state and federal requirements.

(12) "Department" means the department of social and health services (DSHS) and its employees.

(13) "Depreciation" means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

(14) "Direct care component" means nursing care and related care provided to nursing facility residents and includes the therapy care component, along with food, laundry, and dietary services of the previous system.

(15) "Direct care supplies" means medical, pharmaceutical, and other supplies required for the direct care of a nursing facility's residents.

(16) "Entity" means an individual, partnership, corporation, limited liability company, or any other association of individuals capable of entering enforceable contracts.

(17) "Equity" means the net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

(18) "Essential community provider" means a facility which is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.

(19) "Facility" or "nursing facility" means a nursing home licensed in accordance with chapter 18.51 RCW, excepting nursing homes certified as institutions for mental diseases, or that portion of a multiservice facility licensed as a nursing home, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(20) "Fair market value" means the replacement cost of an asset less observed physical depreciation on the date for which the market value is being determined.

(21) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles including, but not limited to, balance sheet,

statement of operations, statement of changes in financial position, and related notes.

(22) "Generally accepted accounting principles" means accounting principles approved by the financial accounting standards board (FASB) or its successor.

(23) "Grouper" means a computer software product that groups individual nursing facility residents into case mix classification groups based on specific resident assessment data and computer logic.

(24) "High labor-cost county" means an urban county in which the median allowable facility cost per case mix unit is more than ten percent higher than the median allowable facility cost per case mix unit among all other urban counties, excluding that county.

(25) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(26) "Home and central office costs" means costs that are incurred in the support and operation of a home and central office. Home and central office costs include centralized services that are performed in support of a nursing facility. The department may exclude from this definition costs that are nonduplicative, documented, ordinary, necessary, and related to the provision of care services to authorized patients.

(27) "Indirect care component" means the elements of administrative expenses, maintenance costs, taxes, and housekeeping services from the previous system.

(28) "Large nonessential community providers" means nonessential community providers with more than sixty licensed beds, regardless of how many beds are set up or in use.

(29) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination (due to any cause other than death or divorce) or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee, shall not be considered modification of a lease term.

(30) "Medical care program" or "medicaid program" means medical assistance, including nursing care, provided under RCW 74.09.500 or authorized state medical care services.

(31) "Medical care recipient," "medicaid recipient," or "recipient" means an individual determined eligible by the department for the services provided under chapter 74.09 RCW.

(32) "Minimum data set" means the overall data component of the resident assessment instrument, indicating the strengths, needs, and preferences of an individual nursing facility resident.

(33) "Net book value" means the historical cost of an asset less accumulated depreciation.

(34) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles.

(35) "Nonurban county" means a county which is not located in a metropolitan statistical area as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government.

(36) "Owner" means a sole proprietor, general or limited partners, members of a limited liability company, and beneficial interest holders of five percent or more of a corporation's outstanding stock.

(37) "Patient day" or "resident day" means a calendar day of care provided to a nursing facility resident, regardless of payment source, which will include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. A "medicaid day" or "recipient day" means a calendar day of care provided to a medicaid recipient determined eligible by the department for services provided under chapter 74.09 RCW, subject to the same conditions regarding admission and discharge applicable to a patient day or resident day of care.

(38) "Qualified therapist" means:

(a) A mental health professional as defined by chapter 71.05 RCW;

(b) An intellectual disabilities professional who is a therapist approved by the department who has had specialized training or one year's experience in treating or working with persons with intellectual or developmental disabilities;

(c) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has the equivalent education and clinical experience;

(d) A physical therapist as defined by chapter 18.74 RCW;

(e) An occupational therapist who is a graduate of a program in occupational therapy, or who has the equivalent of such education or training; and

(f) A respiratory care practitioner certified under chapter 18.89 RCW.

(39) "Quality enhancement component" means a rate enhancement offered to facilities that meet or exceed the standard established for the quality measures.

(40) "Rate" or "rate allocation" means the medicaid per-patient-day payment amount for medicaid patients calculated in accordance with the allocation methodology set forth in *part E of this chapter.

(41) "Rebased rate" or "cost-rebased rate" means a facility-specific component rate assigned to a nursing facility for a particular rate period established on desk-reviewed, adjusted costs reported for that facility covering at least six months of a prior calendar year designated as a year to be used for cost-rebasing payment rate allocations under the provisions of this chapter.

(42) "Records" means those data supporting all financial statements and cost reports including, but not limited to, all general and subsidiary ledgers, books of original entry, and transaction documentation, however such data are maintained.

(43) "Resident assessment instrument," including federally approved modifications for use in this state, means a federally mandated, comprehensive nursing facility resident care planning and assessment tool, consisting of the minimum data set and resident assessment protocols.

(44) "Resident assessment protocols" means those components of the resident assessment instrument that use the minimum data set to trigger or flag a resident's potential problems and risk areas.

(45) "Resource utilization groups" means a case mix classification system that identifies relative resources needed to care for an individual nursing facility resident.

(46) "Secretary" means the secretary of the department of social and health services.

(47) "Small nonessential community providers" means nonessential community providers with sixty or fewer licensed beds, regardless of how many beds are set up or in use.

(48) "Therapy care" means those services required by a nursing facility resident's comprehensive assessment and plan of care, that are provided by qualified therapists, or support personnel under their supervision, including related costs as designated by the department.

(49) "Title XIX" or "medicaid" means the 1965 amendments to the social security act, P.L. 89-07, as amended and the medicaid program administered by the department.

(50) "Urban county" means a county which is located in a metropolitan statistical area as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government. [2016 c 131 § 4; 2010 1st sp.s. c 34 § 2; 2010 c 94 § 29; 2007 c 508 § 7; 2006 c 258 § 1; 2001 1st sp.s. c 8 § 1; 1999 c 353 § 1; 1998 c 322 § 2; 1995 1st sp.s. c 18 § 90; 1993 sp.s. c 13 § 1; 1991 sp.s. c 8 § 11; 1989 c 372 § 17; 1987 c 476 § 6; 1985 c 361 § 16; 1982 c 117 § 1; 1980 c 177 § 2.]

Reviser's note: *(1) Chapter 74.46 RCW was previously divided by parts. RCW 74.46.421 through 74.46.531 were included in part E of this chapter.

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

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

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

Additional notes found at www.leg.wa.gov

74.46.022 Nursing facility medicaid payment system—Establishing procedures, principles, and conditions. The department shall establish, by rule, the procedures, principles, and conditions for the nursing facility medicaid payment system addressed by the following principles:

(1) The department must receive complete, annual reporting of all costs and the financial condition of each contractor, prepared and presented in a standardized manner. The department shall establish, by rule, due dates, requirements for cost report completion, actions required for improperly completed or late cost reports, fines for any statutory or regulatory noncompliance, retention requirements, and public disclosure requirements.

(2) The department shall examine all cost reports to determine whether the information is correct, complete, and reported in compliance with this chapter, department rules and instructions, and generally accepted accounting principles.

(3) Each contractor must establish and maintain, as a service to the resident, a bookkeeping system incorporated into the business records for all resident funds entrusted to the contractor and received by the contractor for the resident. The department shall adopt rules to ensure that resident personal funds handled by the contractor are maintained by each contractor in a manner that is, at a minimum, consistent with federal requirements.

(4) The department shall have the authority to audit resident trust funds and receivables, at its discretion.

(5) Contractors shall provide the department access to the nursing facility, all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

(6) The department shall establish a settlement process in order to reconcile medicaid resident days to billed days and medicaid payments for the preceding calendar year. The settlement process shall ensure that any savings in the direct care or therapy care component rates be shifted only between direct care and therapy care component rates, and shall not be shifted into any other rate components.

(7) The department shall define and identify allowable and unallowable costs.

(8) A contractor shall bill the department for care provided to medicaid recipients, and the department shall pay a contractor for service rendered under the facility contract and appropriately billed. Billing and payment procedures shall be specified by rule.

(9) The department shall establish the conditions for participation in the nursing facility medicaid payment system.

(10) The department shall establish procedures and a rate setting methodology for a change of ownership.

(11) The department shall establish, consistent with federal requirements for nursing facilities participating in the medicaid program, an appeals or exception procedure that allows individual nursing home providers an opportunity to receive prompt administrative review of payment rates with respect to such issues as the department deems appropriate.

(12) The department shall have authority to adopt, amend, and rescind such administrative rules and definitions as it deems necessary to carry out the policies and purposes of this chapter. [2010 1st sp.s. c 34 § 19.]

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

74.46.024 Pay-for-performance supplemental payment structure—Establishing procedures, principles, and conditions. The department shall establish, by rule, the procedures, principles, and conditions for a pay-for-performance supplemental payment structure that provides payment add-ons for high performing facilities. To the extent that funds are appropriated for this purpose, the pay-for-performance structure will include a one percent reduction in payments to facilities with exceptionally high direct care staff turnover, and a method by which the funding that is not paid to these facilities is then used to provide a supplemental payment to facilities with lower direct care staff turnover. [2010 1st sp.s. c 34 § 20.]

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

74.46.421 Purpose of part E—Nursing facility medicaid payment rates. (1) The purpose of *part E of this chapter is to determine nursing facility medicaid payment rates that, in the aggregate for all participating nursing facilities, are in accordance with the biennial appropriations act.

(2)(a) The department shall use the nursing facility medicaid payment rate methodologies described in this chapter to determine initial component rate allocations for each medicaid nursing facility.

(b) The initial component rate allocations shall be subject to adjustment as provided in this section in order to assure that the statewide average payment rate to nursing facilities is less than or equal to the statewide average payment rate specified in the biennial appropriations act.

(3) Nothing in this chapter shall be construed as creating a legal right or entitlement to any payment that (a) has not been adjusted under this section or (b) would cause the statewide average payment rate to exceed the statewide average payment rate specified in the biennial appropriations act.

(4)(a) The statewide average payment rate for any state fiscal year under the nursing facility payment system, weighted by patient days, shall not exceed the annual statewide weighted average nursing facility payment rate identified for that fiscal year in the biennial appropriations act.

(b) If the department determines that the weighted average nursing facility payment rate calculated in accordance with this chapter is likely to exceed the weighted average nursing facility payment rate identified in the biennial appropriations act, then the department shall adjust all nursing facility payment rates proportional to the amount by which the weighted average rate allocations would otherwise exceed the budgeted rate amount. Any such adjustments for the current fiscal year shall only be made prospectively, not retrospectively, and shall be applied proportionately to each component rate allocation for each facility.

(c) If any final order or final judgment, including a final order or final judgment resulting from an adjudicative proceeding or judicial review permitted by chapter 34.05 RCW, would result in an increase to a nursing facility's payment rate for a prior fiscal year or years, the department shall consider whether the increased rate for that facility would result in the statewide weighted average payment rate for all facilities for such fiscal year or years to be exceeded. If the increased rate would result in the statewide average payment rate for such year or years being exceeded, the department shall increase that nursing facility's payment rate to meet the final order or judgment only to the extent that it does not result in an increase to the statewide weighted average payment rate for all facilities. [2008 c 263 § 1; 2001 1st sp.s. c 8 § 4; 1999 c 353 § 3; 1998 c 322 § 18.]

***Reviser's note:** Chapter 74.46 RCW was previously divided by parts. Some of the sections that were included in Part E have since been repealed or have expired.

Additional notes found at www.leg.wa.gov

74.46.441 Public disclosure of rate-setting information. The department shall disclose to any member of the public all rate-setting information consistent with requirements of state and federal laws. [1998 c 322 § 20.]

74.46.475 Submitted cost report—Analysis and adjustment by department. The department shall analyze the submitted cost report or a portion thereof of each contractor for each report period to determine if the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and such rules as the department may adopt. If the analysis finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing payment rate allocations. A schedule of such adjustments shall be provided to contractors and shall include an explanation for the adjustment and the dollar amount of the adjustment. Adjustments shall be subject to review and appeal as provided in this chapter. [2010 1st sp.s. c 34 § 8; 1998 c 322 § 21; 1985 c 361 § 13; 1983 1st ex.s. c 67 § 23.]

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Additional notes found at www.leg.wa.gov

74.46.485 Case mix classification methodology—Notice of implementation. (1) The legislature recognizes that staff and resources needed to adequately care for individuals with cognitive or behavioral impairments is not limited to support for activities of daily living. Therefore, the department shall:

(a) Employ the resource utilization group IV case mix classification methodology. The department shall use the fifty-seven group index maximizing model for the resource utilization group IV grouper version MDS 3.05, but the department may revise or update the classification methodology to reflect advances or refinements in resident assessment or classification, subject to federal requirements. The department may adjust by no more than thirteen percent the case mix index for resource utilization group categories beginning with PA1 through PB2 to any case mix index that aids in achieving the purpose and intent of RCW 74.39A.007 and cost-efficient care, excluding behaviors, and allowing for exceptions for limited placement options; and

(b) Implement minimum data set 3.0 under the authority of this section. The department must notify nursing home contractors twenty-eight days in advance the date of implementation of the minimum data set 3.0. In the notification, the department must identify for all semiannual rate settings following the date of minimum data set 3.0 implementation a previously established semiannual case mix adjustment established for the semiannual rate settings that will be used for semiannual case mix calculations in direct care until minimum data set 3.0 is fully implemented.

(2) The department is authorized to adjust upward the weights for resource utilization groups BA1-BB2 related to cognitive or behavioral health to ensure adequate access to appropriate levels of care.

(3) A default case mix group shall be established for cases in which the resident dies or is discharged for any purpose prior to completion of the resident's initial assessment. The default case mix group and case mix weight for these cases shall be designated by the department.

(4) A default case mix group may also be established for cases in which there is an untimely assessment for the resident. The default case mix group and case mix weight for these cases shall be designated by the department. [2017 c 286 § 1; 2011 1st sp.s. c 7 § 4; 2010 1st sp.s. c 34 § 9; 2009 c 570 § 2; 1998 c 322 § 22.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: "(1) For fiscal years 2012 and 2013 and subject to appropriation, the department of social and health services shall do a comparative analysis of the facility-based payment rates calculated on July 1, 2011, using the payment methodology defined in chapter 74.46 RCW as modified by RCW 74.46.431, 74.46.435, 74.46.437, 74.46.485, 74.46.496, 74.46.501, 74.46.506, 74.46.515, and 74.46.521, to the facility-based payment rates in effect June 30, 2010. If the facility-based payment rate calculated on July 1, 2011, is smaller than the facility-based payment rate on June 30, 2011, the difference shall be provided to the individual nursing facilities as an add-on payment per medicaid resident day.

(2) During the comparative analysis performed in subsection (1) of this section, if it is found that the direct care rate for any facility calculated under RCW 74.46.431, 74.46.435, 74.46.437, 74.46.485, 74.46.496, 74.46.501, 74.46.506, 74.46.515, and 74.46.521 is greater than the direct care rate in effect on June 30, 2010, then the facility shall receive a ten percent direct care rate add-on to compensate that facility for taking on more acute clients than they have in the past.

(3) The rate add-ons provided in subsection (2) of this section are subject to the reconciliation and settlement process provided in RCW 74.46.022(6)." [2011 1st sp.s. c 7 § 11.]

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Effective date—2009 c 570: "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 19, 2009]." [2009 c 570 § 3.]

74.46.496 Case mix weights—Determination—Revisions. (1) Each case mix classification group shall be assigned a case mix weight. The case mix weight for each resident of a nursing facility for each calendar quarter or six-month period during a calendar year shall be based on data from resident assessment instruments completed for the resident and weighted by the number of days the resident was in each case mix classification group. Days shall be counted as provided in this section.

(2) The case mix weights shall be based on the average minutes per registered nurse, licensed practical nurse, and certified nurse aide, for each case mix group, and using the United States department of health and human services nursing facility staff time measurement study. Those minutes shall be weighted by statewide ratios of registered nurse to certified nurse aide, and licensed practical nurse to certified nurse aide, wages, including salaries and benefits, which shall be based on cost report data for this state.

(3) The case mix weights shall be determined as follows:

(a) Set the certified nurse aide wage weight at 1.000 and calculate wage weights for registered nurse and licensed practical nurse average wages by dividing the certified nurse aide average wage into the registered nurse average wage and licensed practical nurse average wage;

(b) Calculate the total weighted minutes for each case mix group in the resource utilization group classification system by multiplying the wage weight for each worker classification by the average number of minutes that classification of worker spends caring for a resident in that resource utilization group classification group, and summing the products;

(c) Assign the lowest case mix weight to the resource utilization group with the lowest total weighted minutes and calculate case mix weights by dividing the lowest group's total weighted minutes into each group's total weighted minutes and rounding weight calculations to the third decimal place.

(4) The case mix weights in this state may be revised if the United States department of health and human services updates its nursing facility staff time measurement studies. The case mix weights shall be revised, but only when direct care component rates are cost-rebased as provided in subsection (5) of this section, to be effective on the July 1st effective date of each cost-rebased direct care component rate. However, the department may revise case mix weights more frequently if, and only if, significant variances in wage ratios occur among direct care staff in the different caregiver classifications identified in this section.

(5) Case mix weights shall be revised when direct care component rates are cost-rebased as provided in *RCW 74.46.431(4). [2011 1st sp.s. c 7 § 5; 2010 1st sp.s. c 34 § 10; 2006 c 258 § 4; 1998 c 322 § 23.]

***Reviser's note:** RCW 74.46.431 was repealed by 2015 2nd sp.s. c 2 § 9, effective June 30, 2016.

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: See note following RCW 74.46.485.

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Additional notes found at www.leg.wa.gov

74.46.501 Average case mix indexes determined quarterly—Facility average case mix index—Medicaid average case mix index. (1) From individual case mix weights for the applicable quarter, the department shall determine two average case mix indexes for each medicaid nursing facility, one for all residents in the facility, known as the facility average case mix index, and one for medicaid residents, known as the medicaid average case mix index.

(2)(a) In calculating a facility's two average case mix indexes for each quarter, the department shall include all residents or medicaid residents, as applicable, who were physically in the facility during the quarter in question based on the resident assessment instrument completed by the facility and the requirements and limitations for the instrument's completion and transmission (January 1st through March 31st, April 1st through June 30th, July 1st through September 30th, or October 1st through December 31st).

(b) The facility average case mix index shall exclude all default cases as defined in this chapter. However, the medicaid average case mix index shall include all default cases.

(3) Both the facility average and the medicaid average case mix indexes shall be determined by multiplying the case mix weight of each resident, or each medicaid resident, as applicable, by the number of days, as defined in this section and as applicable, the resident was at each particular case mix classification or group, and then averaging.

(4) In determining the number of days a resident is classified into a particular case mix group, the department shall determine a start date for calculating case mix grouping periods as specified by rule.

(5) The cutoff date for the department to use resident assessment data, for the purposes of calculating both the

facility average and the medicaid average case mix indexes, and for establishing and updating a facility's direct care component rate, shall be one month and one day after the end of the quarter for which the resident assessment data applies.

(6)(a) Although the facility average and the medicaid average case mix indexes shall both be calculated quarterly, the cost-rebasing period facility average case mix index will be used throughout the applicable cost-rebasing period in combination with cost report data as specified by RCW 74.46.561, to establish a facility's allowable cost per case mix unit. To allow for the transition to minimum data set 3.0 and implementation of resource utilization group IV for July 1, 2015, through June 30, 2016, the department shall calculate rates using the medicaid average case mix scores effective for January 1, 2015, rates adjusted under RCW 74.46.485(1)(a), and the scores shall be increased each six months during the transition period by one-half of one percent. The July 1, 2016, direct care cost per case mix unit shall be calculated by utilizing 2014 direct care costs, patient days, and 2014 facility average case mix indexes based on the minimum data set 3.0 resource utilization group IV grouper 57. Otherwise, a facility's medicaid average case mix index shall be used to update a nursing facility's direct care component rate semiannually.

(b) The facility average case mix index used to establish each nursing facility's direct care component rate shall be based on an average of calendar quarters of the facility's average case mix indexes from the four calendar quarters occurring during the cost report period used to rebase the direct care component rate allocations as specified in RCW 74.46.561.

(c) The medicaid average case mix index used to update or recalibrate a nursing facility's direct care component rate semiannually shall be from the calendar six-month period commencing nine months prior to the effective date of the semiannual rate. For example, July 1, 2010, through December 31, 2010, direct care component rates shall utilize case mix averages from the October 1, 2009, through March 31, 2010, calendar quarters, and so forth. [2016 c 131 § 5; 2015 2nd sp.s. c 2 § 2; 2013 2nd sp.s. c 3 § 2; 2011 1st sp.s. c 7 § 6; 2010 1st sp.s. c 34 § 11; 2006 c 258 § 5; 2001 1st sp.s. c 8 § 9; 1998 c 322 § 24.]

Effective date—2015 2nd sp.s. c 2: "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, 2015." [2015 2nd sp.s. c 2 § 10.]

Comparative analysis—2013 2nd sp.s. c 3: "(1) For fiscal years 2014 and 2015 and subject to appropriation, the department of social and health services shall do a comparative analysis of the facility-based payment rates calculated on July 1, 2013, using the payment methodology defined in chapter 74.46 RCW, to the facility-based payment rates in effect June 30, 2010. If the facility-based payment rate calculated on July 1, 2013, is smaller than the facility-based payment rate on June 30, 2010, the difference shall be provided to the individual nursing facilities as an add-on payment per medicaid resident day.

(2) During the comparative analysis performed in subsection (1) of this section, if it is found that the direct care rate for any facility calculated under chapter 74.46 RCW is greater than the direct care rate in effect on June 30, 2010, then the facility shall receive a ten percent direct care rate add-on to compensate that facility for taking on more acute clients than they have in the past.

(3) The rate add-ons provided in subsection (2) of this section are subject to the reconciliation and settlement process provided in RCW 74.46.022(6)." [2013 2nd sp.s. c 3 § 3.]

Effective date—2013 2nd sp.s. c 3: "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, 2013." [2013 2nd sp.s. c 3 § 4.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: See note following RCW 74.46.485.

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Additional notes found at www.leg.wa.gov

74.46.531 Department may adjust component rates—Contractor may request—Errors or omissions. (1) The department may adjust component rates for errors or omissions made in establishing component rates and determine amounts either overpaid to the contractor or underpaid by the department.

(2) A contractor may request the department to adjust its component rates because of:

(a) An error or omission the contractor made in completing a cost report; or

(b) An alleged error or omission made by the department in determining one or more of the contractor's component rates.

(3) A request for a rate adjustment made on incorrect cost reporting must be accompanied by the amended cost report pages prepared in accordance with the department's written instructions and by a written explanation of the error or omission and the necessity for the amended cost report pages and the rate adjustment.

(4) The department shall review a contractor's request for a rate adjustment because of an alleged error or omission, even if the time period has expired in which the contractor must appeal the rate when initially issued, pursuant to rules adopted by the department under *RCW 74.46.780. If the request is received after this time period, the department has the authority to correct the rate if it agrees an error or omission was committed. However, if the request is denied, the contractor shall not be entitled to any appeals or exception review procedure that the department may adopt under *RCW 74.46.780.

(5) The department shall notify the contractor of the amount of the overpayment to be recovered or additional payment to be made to the contractor reflecting a rate adjustment to correct an error or omission. The recovery from the contractor of the overpayment or the additional payment to the contractor shall be governed by the reconciliation, settlement, security, and recovery processes set forth in this chapter and by rules adopted by the department in accordance with this chapter.

(6) Component rate adjustments approved in accordance with this section are subject to the provisions of RCW 74.46.421. [1998 c 322 § 31.]

***Reviser's note:** RCW 74.46.780 was repealed by 2010 1st sp.s. c 34 § 21.

74.46.541 Skilled nursing facility safety net assessment—Reimbursement of medicaid share. (1) The department shall establish a skilled nursing facility safety net assessment medicaid share pass-through or rate add-on to reimburse the medicaid share of the skilled nursing facility safety net assessment as a medicaid allowable cost consistent

with RCW 74.48.030. This add-on shall not be considered an allowable cost for future year cost rebasing.

(2) As of July 1, 2011, supplemental payments to reimburse medicaid expenditures, including an amount to reimburse the medicaid share of the skilled nursing facility safety net assessment, not to exceed the annual medicare upper payment limit, must be provided for all years when the skilled nursing facility safety net assessment is levied, consistent with RCW 74.48.030. These supplemental payments, at a minimum, must be sufficient to reimburse the medicaid share of the assessment for those paying the assessment. The part of these supplemental payments that reimburses the medicaid share of the assessment are not subject to the reconciliation and settlement process provided in RCW 74.46.022(6). [2011 1st sp.s. c 7 § 10.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

74.46.551 Facility-based payment rates—Comparative analysis—Rate add-ons. (1) For fiscal year 2016 and subject to appropriation, the department shall do a comparative analysis of the facility-based payment rates calculated on July 1, 2015, using the payment methodology defined in this chapter, to the facility-based rates in effect June 30, 2010. If the facility-based payment rate calculated on July 1, 2015, is smaller than the facility-based payment rate on June 30, 2010, the difference must be provided to the individual nursing facilities as an add-on per medicaid resident day.

(2) During the comparative analysis performed in subsection (1) of this section, for fiscal year 2016, if it is found that the direct care rate for any facility calculated under this chapter is greater than the direct care rate in effect on June 30, 2010, then the facility must receive a ten percent direct care rate add-on to compensate that facility for taking on more acute clients than it has in the past.

(3) The rate add-ons provided in subsection (2) of this section are subject to the reconciliation and settlement process provided in RCW 74.46.022(6). [2015 2nd sp.s. c 2 § 3.]

Effective date—2015 2nd sp.s. c 2: See note following RCW 74.46.501.

74.46.561 Nursing home payment rates—System components—Quality incentive—Reimbursement of safety net assessment—Rate reductions or increases limited. (1) The legislature adopts a new system for establishing nursing home payment rates beginning July 1, 2016. Any payments to nursing homes for services provided after June 30, 2016, must be based on the new system. The new system must be designed in such a manner as to decrease administrative complexity associated with the payment methodology, reward nursing homes providing care for high acuity residents, incentivize quality care for residents of nursing homes, and establish minimum staffing standards for direct care.

(2) The new system must be based primarily on industry-wide costs, and have three main components: Direct care, indirect care, and capital.

(3) The direct care component must include the direct care and therapy care components of the previous system, along with food, laundry, and dietary services. Direct care must be paid at a fixed rate, based on one hundred percent or greater of statewide case mix neutral median costs, but shall be set so that a nursing home provider's direct care rate does not exceed one hundred eighteen percent of its base year's direct care allowable costs except if the provider is below the minimum staffing standard established in RCW 74.42.360(2). Direct care must be performance-adjusted for acuity every six months, using case mix principles. Direct care must be regionally adjusted using county wide wage index information available through the United States department of labor's bureau of labor statistics. There is no minimum occupancy for direct care. The direct care component rate allocations calculated in accordance with this section must be adjusted to the extent necessary to comply with RCW 74.46.421.

(4) The indirect care component must include the elements of administrative expenses, maintenance costs, and housekeeping services from the previous system. A minimum occupancy assumption of ninety percent must be applied to indirect care. Indirect care must be paid at a fixed rate, based on ninety percent or greater of statewide median costs. The indirect care component rate allocations calculated in accordance with this section must be adjusted to the extent necessary to comply with RCW 74.46.421.

(5) The capital component must use a fair market rental system to set a price per bed. The capital component must be adjusted for the age of the facility, and must use a minimum occupancy assumption of ninety percent.

(a) Beginning July 1, 2016, the fair rental rate allocation for each facility must be determined by multiplying the allowable nursing home square footage in (c) of this subsection by the RSMeans rental rate in (d) of this subsection and by the number of licensed beds yielding the gross unadjusted building value. An equipment allowance of ten percent must be added to the unadjusted building value. The sum of the unadjusted building value and equipment allowance must then be reduced by the average age of the facility as determined by (e) of this subsection using a depreciation rate of one and one-half percent. The depreciated building and equipment plus land valued at ten percent of the gross unadjusted building value before depreciation must then be multiplied by the rental rate at seven and one-half percent to yield an allowable fair rental value for the land, building, and equipment.

(b) The fair rental value determined in (a) of this subsection must be divided by the greater of the actual total facility census from the prior full calendar year or imputed census based on the number of licensed beds at ninety percent occupancy.

(c) For the rate year beginning July 1, 2016, all facilities must be reimbursed using four hundred square feet. For the rate year beginning July 1, 2017, allowable nursing facility square footage must be determined using the total nursing facility square footage as reported on the medicaid cost reports submitted to the department in compliance with this chapter. The maximum allowable square feet per bed may not exceed four hundred fifty.

(d) Each facility must be paid at eighty-three percent or greater of the median nursing facility RSMeans construction index value per square foot. The department may use updated RSMeans construction index information when more recent square footage data becomes available. The statewide value per square foot must be indexed based on facility zip code by

multiplying the statewide value per square foot times the appropriate zip code based index. For the purpose of implementing this section, the value per square foot effective July 1, 2016, must be set so that the weighted average fair rental value rate is not less than ten dollars and eighty cents per patient day. The capital component rate allocations calculated in accordance with this section must be adjusted to the extent necessary to comply with RCW 74.46.421.

(e) The average age is the actual facility age reduced for significant renovations. Significant renovations are defined as those renovations that exceed two thousand dollars per bed in a calendar year as reported on the annual cost report submitted in accordance with this chapter. For the rate beginning July 1, 2016, the department shall use renovation data back to 1994 as submitted on facility cost reports. Beginning July 1, 2016, facility ages must be reduced in future years if the value of the renovation completed in any year exceeds two thousand dollars times the number of licensed beds. The cost of the renovation must be divided by the accumulated depreciation per bed in the year of the renovation to determine the equivalent number of new replacement beds. The new age for the facility is a weighted average with the replacement bed equivalents reflecting an age of zero and the existing licensed beds, minus the new bed equivalents, reflecting their age in the year of the renovation. At no time may the depreciated age be less than zero or greater than forty-four years.

(f) A nursing facility's capital component rate allocation must be rebased annually, effective July 1, 2016, in accordance with this section and this chapter.

(g) For the purposes of this subsection (5), "RSMeans" means building construction costs data as published by Gordian.

(6) A quality incentive must be offered as a rate enhancement beginning July 1, 2016.

(a) An enhancement no larger than five percent and no less than one percent of the statewide average daily rate must be paid to facilities that meet or exceed the standard established for the quality incentive. All providers must have the opportunity to earn the full quality incentive payment.

(b) The quality incentive component must be determined by calculating an overall facility quality score composed of four to six quality measures. For fiscal year 2017 there shall be four quality measures, and for fiscal year 2018 there shall be six quality measures. Initially, the quality incentive component must be based on minimum data set quality measures for the percentage of long-stay residents who self-report moderate to severe pain, the percentage of high-risk long-stay residents with pressure ulcers, the percentage of long-stay residents experiencing one or more falls with major injury, and the percentage of long-stay residents with a urinary tract infection. Quality measures must be reviewed on an annual basis by a stakeholder work group established by the department. Upon review, quality measures may be added or changed. The department may risk adjust individual quality measures as it deems appropriate.

(c) The facility quality score must be point based, using at a minimum the facility's most recent available three-quarter average centers for medicare and medicaid services quality data. Point thresholds for each quality measure must be established using the corresponding statistical values for the quality measure point determinants of eighty quality measure points, sixty quality measure points, forty quality measure points, and twenty quality measure points, identified in the most recent available five-star quality rating system technical user's guide published by the center for medicare and medicaid services.

(d) Facilities meeting or exceeding the highest performance threshold (top level) for a quality measure receive twenty-five points. Facilities meeting the second highest performance threshold receive twenty points. Facilities meeting the third level of performance threshold receive fifteen points. Facilities in the bottom performance threshold level receive no points. Points from all quality measures must then be summed into a single aggregate quality score for each facility.

(e) Facilities receiving an aggregate quality score of eighty percent of the overall available total score or higher must be placed in the highest tier (tier V), facilities receiving an aggregate score of between seventy and seventy-nine percent of the overall available total score must be placed in the second highest tier (tier IV), facilities receiving an aggregate score of between sixty and sixty-nine percent of the overall available total score must be placed in the third highest tier (tier III), facilities receiving an aggregate score of between fifty and fifty-nine percent of the overall available total score must be placed in the fourth highest tier (tier II), and facilities receiving less than fifty percent of the overall available total score must be placed in the lowest tier (tier I).

(f) The tier system must be used to determine the amount of each facility's per patient day quality incentive component. The per patient day quality incentive component for tier IV is seventy-five percent of the per patient day quality incentive component for tier V, the per patient day quality incentive component for tier III is fifty percent of the per patient day quality incentive component for tier V, and the per patient day quality incentive component for tier II is twenty-five percent of the per patient day quality incentive component for tier V. Facilities in tier I receive no quality incentive component.

(g) Tier system payments must be set in a manner that ensures that the entire biennial appropriation for the quality incentive program is allocated.

(h) Facilities with insufficient three-quarter average centers for medicare and medicaid services quality data must be assigned to the tier corresponding to their five-star quality rating. Facilities with a five-star quality rating must be assigned to the highest tier (tier V) and facilities with a one-star quality rating must be assigned to the lowest tier (tier I). The use of a facility's five-star quality rating shall only occur in the case of insufficient centers for medicare and medicaid services minimum data set information.

(i) The quality incentive rates must be adjusted semiannually on July 1 and January 1 of each year using, at a minimum, the most recent available three-quarter average centers for medicare and medicaid services quality data.

(j) Beginning July 1, 2017, the percentage of short-stay residents who newly received an antipsychotic medication must be added as a quality measure. The department must determine the quality incentive thresholds for this quality measure in a manner consistent with those outlined in (b) through (h) of this subsection using the centers for medicare and medicaid services quality data.

(k) Beginning July 1, 2017, the percentage of direct care staff turnover must be added as a quality measure using the centers for medicare and medicaid services' payroll-based journal and nursing home facility payroll data. Turnover is defined as an employee departure. The department must determine the quality incentive thresholds for this quality measure using data from the centers for medicare and medicaid services' payroll-based journal, unless such data is not available, in which case the department shall use direct care staffing turnover data from the most recent medicaid cost report.

(7) Reimbursement of the safety net assessment imposed by chapter 74.48 RCW and paid in relation to medicaid residents must be continued.

(8) The direct care and indirect care components must be rebased in even-numbered years, beginning with rates paid on July 1, 2016. Rates paid on July 1, 2016, must be based on the 2014 calendar year cost report. On a percentage basis, after rebasing, the department must confirm that the statewide average daily rate has increased at least as much as the average rate of inflation, as determined by the skilled nursing facility market basket index published by the centers for medicare and medicaid services, or a comparable index. If after rebasing, the percentage increase to the statewide average daily rate is less than the average rate of inflation for the same time period, the department is authorized to increase rates by the difference between the percentage increase after rebasing and the average rate of inflation.

(9) The direct care component provided in subsection (3) of this section is subject to the reconciliation and settlement process provided in RCW 74.46.022(6). Beginning July 1, 2016, pursuant to rules established by the department, funds that are received through the reconciliation and settlement process provided in RCW 74.46.022(6) must be used for technical assistance, specialized training, or an increase to the quality enhancement established in subsection (6) of this section. The legislature intends to review the utility of maintaining the reconciliation and settlement process under a price-based payment methodology, and may discontinue the reconciliation and settlement process after the 2017-2019 fiscal biennium.

(10) Compared to the rate in effect June 30, 2016, including all cost components and rate add-ons, no facility may receive a rate reduction of more than one percent on July 1, 2016, more than two percent on July 1, 2017, or more than five percent on July 1, 2018. To ensure that the appropriation for nursing homes remains cost neutral, the department is authorized to cap the rate increase for facilities in fiscal years 2017, 2018, and 2019. [2019 c 301 § 1; 2017 c 286 § 2; 2016 c 131 § 1; 2015 2nd sp.s. c 2 § 4.]

Effective date—2015 2nd sp.s. c 2: See note following RCW 74.46.501.

74.46.562 Indian health service or tribal facilities—Payment rates. Services provided by or through facilities of the Indian health service or facilities operated by a tribe or tribal organization pursuant to 42 C.F.R. Part 136 may be paid at the applicable rates published in the federal register or at a cost-based rate applicable to such types of facilities as approved by the centers for medicare and medicaid services and may be exempted from the rate determination set forth in this chapter. The department may enact emergency rules to implement this section. [2019 c 301 § 2.]

74.46.571 Nursing home payment rates—Rules. The department shall adopt rules as are necessary and reasonable to effectuate and maintain the new system for establishing nursing home payment rates described in RCW 74.46.561 and the minimum staffing standards described in RCW 74.42.360. The rules must be consistent with the principles described in RCW 74.46.561 and 74.42.360. In adopting such rules, the department shall solicit the opinions of nursing facility providers, nursing facility provider associations, nursing facility employees, and nursing facility consumer groups. [2015 2nd sp.s. c 2 § 5.]

Effective date—2015 2nd sp.s. c 2: See note following RCW 74.46.501.

74.46.581 Separate nursing facility quality enhancement account. A separate nursing facility quality enhancement account is created in the custody of the state treasurer. Beginning July 1, 2015, all net receipts from the reconciliation and settlement process provided in RCW 74.46.022(6), as described within RCW 74.46.561, must be deposited into the account. Beginning July 1, 2016, all receipts from the system of financial penalties for facilities out of compliance with minimum staffing standards, as described within RCW 74.42.360, must be deposited into the account. Only the secretary, or the secretary'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 technical assistance for nursing facilities, specialized training for nursing facilities, or an increase to the quality enhancement established in RCW 74.46.561, or as necessary for the reconciliation and settlement process, which requires deposits and withdrawals to complete both the preliminary and final settlement net receipt amounts for this account. [2016 c 131 § 7; 2015 2nd sp.s. c 2 § 8.]

Effective date—2015 2nd sp.s. c 2: See note following RCW 74.46.501.

74.46.800 Rule-making authority. (1) The department shall have authority to adopt, amend, and rescind such administrative rules and definitions as it deems necessary to carry out the policies and purposes of this chapter and to resolve issues and develop procedures to implement, update, and improve the nursing facility medicaid payment system.

(2) Nothing in this chapter shall be construed to require the department to adopt or employ any calculations, steps, tests, methodologies, alternate methodologies, indexes, formulas, mathematical or statistical models, concepts, or procedures for medicaid rate setting or payment that are not expressly called for in this chapter. [2010 1st sp.s. c 34 § 18; 1998 c 322 § 42; 1980 c 177 § 80.]

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

74.46.835 AIDS pilot nursing facility—Payment for direct care. (1) Payment for direct care at the pilot nursing facility in King county designed to meet the service needs of residents living with AIDS, as defined in RCW 70.24.017,

and as specifically authorized for this purpose under chapter 9, Laws of 1989 1st ex. sess., shall be exempt from case mix methods of rate determination set forth in this chapter and shall be exempt from the direct care wage index adjustment set forth in this chapter.

(2) Direct care component rates at the AIDS pilot facility shall be based on direct care reported costs at the pilot facility, utilizing the same rate-setting cycle prescribed for other nursing facilities, and as supported by a staffing benchmark based upon a department-approved acuity measurement system.

(3) The provisions of RCW 74.46.421 and all other rate-setting principles, cost lids, and limits, including settlement as provided in rule shall apply to the AIDS pilot facility.

(4) This section applies only to the AIDS pilot nursing facility. [2016 c 131 § 6; 2010 1st sp.s. c 34 § 17; 1998 c 322 § 46.]

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

74.46.840 Conflict with federal requirements. If any part of this chapter or RCW 18.51.145 or 74.09.120 is found by an agency of the federal government to be in conflict with federal requirements that are a prescribed condition to the receipts of federal funds to the state, the conflicting part of this chapter or RCW 18.51.145 or 74.09.120 is declared inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter or RCW 18.51.145 or 74.09.120 in its application to the agencies concerned. In the event that any portion of this chapter or RCW 18.51.145 or 74.09.120 is found to be in conflict with federal requirements that are a prescribed condition to the receipt of federal funds, the secretary, to the extent that the secretary finds it to be consistent with the general policies and intent of chapters 18.51, 74.09, and 74.46 RCW, may adopt such rules as to resolve a specific conflict and that do meet minimum federal requirements. In addition, the secretary shall submit to the next regular session of the legislature a summary of the specific rule changes made and recommendations for statutory resolution of the conflict. [1998 c 322 § 44; 1983 1st ex.s. c 67 § 42; 1980 c 177 § 92.]

74.46.909 Retrospective application—Clarification of chapter 8, Laws of 2001 1st sp. sess.—2008 c 263. The legislature clarifies the enactment of *chapter 8, Laws of 2001 1st sp. sess. and intends this act be curative, remedial, and retrospectively applicable to July 1, 1998. [2008 c 263 § 5.]

***Reviser's note:** For codification of chapter 8, Laws of 2001 1st sp. sess., see Codification Tables.

Chapter 74.48 RCW
SKILLED NURSING FACILITY SAFETY NET ASSESSMENTS

Sections

74.48.005 Purpose—Findings—Intent. (1) It is the intent of the legislature to encourage maximization of financial resources eligible and available for medicaid services by establishing the skilled nursing facility safety net trust fund to receive skilled nursing facility safety net assessments to use in securing federal matching funds under federally prescribed programs available through the state medicaid plan.

(2) The purpose of this chapter is to provide for a safety net assessment on certain Washington skilled nursing facilities, which will be used solely to support payments to skilled nursing facilities for medicaid services.

(3) The legislature finds that:

(a) Washington skilled nursing facilities have proposed a skilled nursing facility safety net assessment to generate additional state and federal funding for the medicaid program, which will be used in part to restore recent reductions in skilled nursing facility reimbursement rates and provide for an increase in medicaid reimbursement rates; and

(b) The skilled nursing facility safety net assessment and skilled nursing facility safety net trust fund created in this chapter allows the state to generate additional federal financial participation for the medicaid program and provides for increased reimbursement to skilled nursing facilities.

(4) In adopting this chapter, it is the intent of the legislature:

(a) To impose a skilled nursing facility safety net assessment to be used solely for the purposes specified in this chapter;

(b) That funds generated by the assessment, including matching federal financial participation, shall not be used for purposes other than as specified in this chapter;

(c) That the total amount assessed not exceed the amount needed, in combination with all other available funds, to support the reimbursement rates and other payments authorized by this chapter, including payments under RCW 74.48.030; and

(d) To condition the assessment and use of the resulting funds on receiving federal approval for receipt of additional federal financial participation. [2011 1st sp.s. c 7 § 12.]

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

(1) "Certain high volume medicaid nursing facilities" means the fewest number of facilities necessary with the highest number of medicaid days or total patient days annually to meet the statistical redistribution test at 42 C.F.R. Sec. 433.68(e)(2).

(2) "Continuing care retirement community" means a facility that provides a continuum of services by one operational entity or related organization providing independent living services, or *boarding home or assisted living services under chapter 18.20 RCW, and skilled nursing services under chapter 18.51 RCW in a single contiguous campus. The number of licensed nursing home beds must be sixty percent or

less of the total number of beds available in the entire continuing care retirement community. For purposes of this subsection "contiguous" means land adjoining or touching other property held by the same or related organization including land divided by a public road.

(3) "Deductions from revenue" means reductions from gross revenue resulting from an inability to collect payment of charges. Such reductions include bad debt, contractual adjustments, policy discounts and adjustments, and other such revenue deductions.

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

(5) "Fund" means the skilled nursing facility safety net trust fund.

(6) "Hospital based" means a nursing facility that is physically part of, or contiguous to, a hospital. For purposes of this subsection "contiguous" has the same meaning as in subsection (2) of this section.

(7) "Medicare patient day" means a patient day for medicare beneficiaries on a medicare part A stay, medicare hospice stay, and a patient day for persons who have opted for managed care coverage using their medicare benefit.

(8) "Medicare upper payment limit" means the limitation established by federal regulations, 42 C.F.R. Sec. 447.272, that disallows federal matching funds when state medicaid agencies pay certain classes of nursing facilities an aggregate amount for services that would exceed the amount that would be paid for the same services furnished by that class of nursing facilities under medicare payment principles.

(9) "Net resident service revenue" means gross revenue from services to nursing facility residents less deductions from revenue. Net resident service revenue does not include other operating revenue or nonoperating revenue.

(10) "Nonexempt nursing facility" means a nursing facility that is not exempt from the skilled nursing facility safety net assessment.

(11) "Nonoperating revenue" means income from activities not relating directly to the day-to-day operations of an organization. Nonoperating revenue includes such items as gains on disposal of a facility's assets, dividends, and interest from security investments, gifts, grants, and endowments.

(12) "Nursing facility," "facility," or "skilled nursing facility" has the same meaning as "nursing home" as defined in RCW 18.51.010.

(13) "Other operating revenue" means income from nonresident care services to residents, as well as sales and activities to persons other than residents. It is derived in the course of operating the facility such as providing personal laundry service for residents or from other sources such as meals provided to persons other than residents, personal telephones, gift shops, and vending machines.

(14) "Related organization" means an entity which is under common ownership and/or control with, or has control of, or is controlled by, the contractor, as defined under chapter 74.46 RCW.

(a) "Common ownership" exists when an entity is the beneficial owner of five percent or more ownership interest in the contractor, as defined under chapter 74.46 RCW and any other entity.

(b) "Control" exists where an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable or exercised.

(15) "Resident day" means a calendar day of care provided to a nursing facility resident, excluding medicare patient days. Resident days include the day of admission and exclude the day of discharge. An admission and discharge on the same day count as one day of care. Resident days include nursing facility hospice days and exclude bedhold days for all residents. [2011 1st sp.s. c 7 § 13.]

***Reviser's note:** The term "boarding home" was changed to "assisted living facility" by 2012 c 10.

74.48.020 Skilled nursing facility safety net trust fund. (1) There is established in the state treasury the skilled nursing facility safety net trust fund. The purpose and use of the fund shall be to receive and disburse funds, together with accrued interest, in accordance with this chapter. Moneys in the fund, including interest earned, shall not be used or disbursed for any purposes other than those specified in this chapter. Any amounts expended from the fund that are later recouped by the department on audit or otherwise shall be returned to the fund.

(2) The skilled nursing facility safety net trust fund must be a separate and continuing fund, and no money in the fund reverts to the state general fund at any time. All assessments, interest, and penalties collected by the department under RCW 74.48.030, 74.48.040, and 74.48.080 shall be deposited into the fund.

(3) Any money received under RCW 74.48.030, 74.48.040, and 74.48.080 must be deposited in the state treasury for credit to the skilled nursing facility safety net trust fund, and must be expended, to the extent authorized by federal law, to obtain federal financial participation in the medicaid program and to maintain and enhance nursing facility rates in a manner set forth in subsection (4) of this section.

(4) Disbursements from the fund may be made only as follows:

(a) As an immediate pass-through or rate add-on to reimburse the medicaid share of the skilled nursing facility safety net assessment as a medicaid allowable cost;

(b) To make medicaid payments for nursing facility services in accordance with chapter 74.46 RCW and pursuant to this chapter;

(c) To refund erroneous or excessive payments made by skilled nursing facilities pursuant to this chapter;

(d) To administer the provisions of this chapter the department may expend an amount not to exceed one-half of one percent of the money received from the assessment, and must not exceed the amount authorized for expenditure by the legislature for administrative expenses in a fiscal year;

(e) To repay the federal government for any excess payments made to skilled nursing facilities from the fund if the assessments or payment increases set forth in this chapter are deemed out of compliance with federal statutes and regulations and all appeals have been exhausted. In such a case, the department may require skilled nursing facilities receiving excess payments to refund the payments in question to the fund. The state in turn shall return funds to the federal government in the same proportion as the original financing. If a skilled nursing facility is unable to refund payments, the state

shall either develop a payment plan or deduct moneys from future medicaid payments, or both; and

(f) To increase nursing facility payments to fund covered services to medicaid beneficiaries within medicare upper limits.

(5) Any positive balance in the fund at the end of a fiscal year shall be applied to reduce the assessment amount for the subsequent fiscal year in accordance with RCW 74.48.040(1)(c)(i).

(6) Upon termination of the assessment, any amounts remaining in the fund shall be refunded to skilled nursing facilities, pro rata according to the amount paid by the facility, subject to limitations of federal law. [2011 1st sp.s. c 7 § 14.]

74.48.030 Assessments. (1) In accordance with the redistribution method set forth in 42 C.F.R. Sec. 433.68(e)(1) and (2), the department shall seek a waiver of the broad-based and uniform provider assessment requirements of federal law to exclude certain nursing facilities from the skilled nursing facility safety net assessment and to permit certain high volume medicaid nursing facilities or facilities with a high number of total annual resident days to pay the skilled nursing facility safety net assessment at a lesser amount per nonmedicare patient day.

(2) The skilled nursing facility safety net assessment shall, at no time, be greater than the maximum percentage of the nursing facility industry reported net patient service revenues allowed under federal law or regulation.

(3) All skilled nursing facility safety net assessments collected pursuant to this section by the department shall be transmitted to the state treasurer who shall credit all such amounts to the skilled nursing facility safety net trust fund. [2011 1st sp.s. c 7 § 15.]

74.48.040 Administration and collection. (1) The department, in cooperation with the office of financial management, shall develop rules for determining the amount to be assessed to individual skilled nursing facilities, notifying individual skilled nursing facilities of the assessed amount, and collecting the amounts due. Such rule making shall specifically include provision for:

(a) Payment of the skilled nursing facility safety net assessment;

(b) Interest on delinquent assessments;

(c) Adjustment of the assessment amounts as follows:

(i) The assessment amounts under RCW 74.48.030 may be adjusted as follows:

(A) If sufficient other appropriated funds for skilled nursing facilities, are available to support the nursing facility reimbursement rates as authorized in the biennial appropriations act and other uses and payments permitted by RCW 74.48.020 and 74.48.030 without utilizing the full assessment authorized under RCW 74.48.030, the department shall reduce the amount of the assessment to the minimum level necessary to support those reimbursement rates and other uses and payments.

(B) So long as none of the conditions set forth in RCW 74.48.060(2) have occurred, if the department's forecasts indicate that the assessment amounts under RCW 74.48.030, together with all other appropriated funds, are not sufficient to support the skilled nursing facility reimbursement rates authorized in the biennial appropriations act and other uses and payments authorized under RCW 74.48.020 and 74.48.030, the department shall increase the assessment rates to the amount necessary to support those reimbursement rates and other payments to the maximum amount allowable under federal law.

(C) Any positive balance remaining in the fund at the end of the fiscal year shall be applied to reduce the assessment amount for the subsequent fiscal year.

(ii) Beginning July 1, 2012, any adjustment to the assessment amounts pursuant to this subsection, and the data supporting such adjustment, including but not limited to relevant data listed in subsection (2) of this section, must be submitted to the Washington health care association, and aging services of Washington, for review and comment at least sixty calendar days prior to implementation of such adjusted assessment amounts. Any review and comment provided by the Washington health care association, and aging services of Washington, shall not limit the ability of either association or its members to challenge an adjustment or other action by the department that is not made in accordance with this chapter.

(2) By November 30th of each year, the department shall provide the following data to the office of financial management, the chair of the fiscal committee of the senate and the house of representatives, the Washington health care association, and aging services of Washington:

(a) The fund balance; and

(b) The amount of assessment paid by each skilled nursing facility.

(3) Assessments shall be assessed from July 1, 2011. [2011 1st sp.s. c 7 § 16.]

74.48.050 Exceptions. (1) Subject to subsection (4) of this section the department shall exempt the following nursing facility providers from the skilled nursing facility safety net assessment subject to federal approval under 42 C.F.R. Sec. 433.68(e)(2):

(a) Continuing care retirement communities;

(b) Nursing facilities with thirty-five or fewer licensed beds;

(c) State, tribal, and county operated nursing facilities; and

(d) Any nursing facility operated by a public hospital district and nursing facilities that are hospital-based.

(2) The department shall lower the skilled nursing facility safety net assessment for either certain high volume medicaid nursing facilities or certain facilities with high resident volumes to meet the redistributive tests of 42 C.F.R. Sec. 433.68(e)(2).

(3) The department shall lower the skilled nursing facility safety net assessment for any skilled nursing facility with a licensed bed capacity in excess of two hundred three beds to the same level described in subsection (2) of this section.

(4) To the extent necessary to obtain federal approval under 42 C.F.R. Sec. 433.68(e)(2), the exemptions prescribed in subsections (1), (2), and (3) of this section may be amended by the department.

(5) The per resident day assessment rate shall be the same amount for each affected facility except as prescribed in subsections (1), (2), and (3) of this section.

(6) The department shall notify the nursing facility operators of any skilled nursing facilities that would be exempted from the skilled nursing facility safety net assessment pursuant to the waiver request submitted to the United States department of health and human services under this section. [2011 1st sp.s. c 7 § 17.]

74.48.060 Conditions. (1) If the centers for medicare and medicaid services fail to approve any state plan amendments or waiver requests that are necessary in order to implement the applicable sections of this chapter then the assessment authorized in RCW 74.48.040 shall cease to be imposed.

(2) Nothing in subsection (1) of this section prohibits the department from working cooperatively with the centers for medicare and medicaid services to secure approval of any needed state plan amendments or waiver requests. As provided in RCW 74.48.030 and 74.48.050, the department shall adjust any submitted state plan amendments or waiver requests as necessary to achieve approval.

(3) If this chapter does not take effect or ceases to be imposed, any moneys remaining in the fund shall be refunded to skilled nursing facilities in proportion to the amounts paid by such facilities. [2011 1st sp.s. c 7 § 18.]

74.48.070 Assessment part of operating overhead. The incidence and burden of assessments imposed under this chapter shall be on skilled nursing facilities and the expense associated with the assessments shall constitute a part of the operating overhead of the facilities. Skilled nursing facilities shall not itemize the safety net assessment on billings to residents or third-party payers. [2011 1st sp.s. c 7 § 19.]

74.48.080 Enforcement. If a nursing facility fails to make timely payment of the safety net assessment, the department may seek a remedy provided by law, including, but not limited to:

(1) Withholding any medical assistance reimbursement payments until such time as the assessment amount is recovered;

(2) Suspension or revocation of the nursing facility license; or

(3) Imposition of a civil fine up to one thousand dollars per day for each delinquent payment, not to exceed the amount of the assessment. [2011 1st sp.s. c 7 § 20.]

74.48.090 Quality incentive payments. (1) The department and the department of health, in consultation with the Washington state health care association, and aging services of Washington, shall design a system of skilled nursing facility quality incentive payments. The design of the system shall be submitted to the relevant policy and fiscal committees of the legislature by January 1, 2013. For the 2011-2013 fiscal biennial budget period, the department shall not implement a system of skilled nursing facility quality incentive payments designed pursuant to this section. The system shall be based upon the following principles:

(a) Evidence-based treatment and processes shall be used to improve health care outcomes for skilled nursing facility residents;

(b) Effective purchasing strategies to improve the quality of health care services should involve the use of common quality improvement measures, while recognizing that some measures may not be appropriate for application to facilities with high bariatric, behaviorally challenged, or rehabilitation populations;

(c) Quality measures chosen for the system should be consistent with the standards that have been developed by national quality improvement organizations, such as the national quality forum, the federal centers for medicare and medicaid services, or the federal agency for healthcare research and quality. New reporting burdens to skilled nursing facilities should be minimized by giving priority to measures skilled nursing facilities that are currently required to report to governmental agencies, such as the nursing home compare measures collected by the federal centers for medicare and medicaid services;

(d) Benchmarks for each quality improvement measure should be set at levels that are feasible for skilled nursing facilities to achieve, yet represent real improvements in quality and performance for a majority of skilled nursing facilities in Washington state; and

(e) Skilled nursing facilities performance and incentive payments should be designed in a manner such that all facilities in Washington are able to receive the incentive payments if performance is at or above the benchmark score set in the system established under this section.

(2) Pursuant to an appropriation by the legislature, for state fiscal year 2014 and each fiscal year thereafter, assessments may be increased to support an additional one percent increase in skilled nursing facility reimbursement rates for facilities that meet the quality incentive benchmarks established under this section. [2012 2nd sp.s. c 7 § 921; 2011 1st sp.s. c 7 § 21.]

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

74.48.900 Severability—2011 1st sp.s. c 7. Except as provided in RCW 74.48.060, if any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2011 1st sp.s. c 7 § 24.]

74.48.901 Effective date—2011 1st sp.s. c 7. 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, 2011. [2011 1st sp.s. c 7 § 26.]

Chapter 74.50 RCW
ALCOHOLISM AND DRUG ADDICTION TREATMENT AND SUPPORT

Sections

74.50.900 Short title.

Alcoholism, intoxication, and drug addiction treatment: Chapter 70.96 RCW.

Applicability of chapter 74.08 RCW: RCW 74.08.900.

74.50.010 Legislative findings. ***(Effective until January 1, 2020.)*** The legislature finds:

(1) There is a need for reevaluation of state policies and programs regarding indigent alcoholics and drug addicts;

(2) The practice of providing a cash grant may be causing rapid caseload growth and attracting transients to the state;

(3) Many chronic public inebriates have been recycled through county detoxification centers repeatedly without apparent improvement;

(4) The assumption that all individuals will recover through treatment has not been substantiated;

(5) The state must modify its policies and programs for alcoholics and drug addicts and redirect its resources in the interests of these individuals, the community, and the taxpayers; and

(6) Treatment resources should be focused on persons willing to commit to rehabilitation; and

(7) It is the intent of the legislature that, to the extent possible, shelter services be developed under this chapter that do not result in the displacement of existing emergency shelter beds. To the extent that shelter operators do not object, it is the intent of the legislature that any vacant shelter beds contracted for under this chapter be made available to provide emergency temporary shelter to homeless individuals. [1988 c 163 § 1; 1987 c 406 § 2.]

74.50.011 Additional legislative findings. ***(Effective until January 1, 2020.)*** The legislature recognizes that alcoholism and drug addiction are treatable diseases and that most persons with this illness can recover. For this reason, this chapter provides a range of substance abuse treatment services. In addition, the legislature recognizes that when these diseases have progressed to the stage where a person's alcoholism or drug addiction has resulted in physiological or organic damage or cognitive impairment, shelter services may be appropriate. The legislature further recognizes that distinguishing alcoholics and drug addicts from persons incapacitated due to physical disability or mental illness is necessary in order to provide an incentive for alcoholics and drug addicts to seek appropriate treatment and in order to avoid use of programs that are not oriented toward their conditions. [1989 1st ex.s. c 18 § 1.]

Additional notes found at www.leg.wa.gov

74.50.035 Shelter services—Eligibility. ***(Effective until January 1, 2020.)*** A person is eligible for shelter services under this chapter only if he or she:

(1) Meets the financial eligibility requirements contained in RCW 74.04.005;

(2) Is incapacitated from gainful employment due to a condition contained in subsection (3) of this section, which incapacity will likely continue for a minimum of sixty days; and

(3)(a) Suffers from active addiction to alcohol or drugs manifested by physiological or organic damage resulting in functional limitation, based on documented evidence from a physician, psychologist, or alcohol or drug treatment professional who is determined by the department to be qualified to make this finding; or

(b) Suffers from active addiction to alcohol or drugs to the extent that impairment of the applicant's cognitive ability will not dissipate with sobriety or detoxification, based on documented evidence from a physician, psychologist, or alcohol or drug treatment professional who is determined by the department to be qualified to make this finding. [1989 1st ex.s. c 18 § 2.]

Additional notes found at www.leg.wa.gov

74.50.040 Client assessment, treatment, and support services. ***(Effective until January 1, 2020.)*** (1) The department shall provide client assessment, treatment, and support services. The assessment services shall include diagnostic evaluation and arranging for admission into treatment or supported living programs.

(2) The department shall assist clients in making application for supplemental security benefits and in obtaining the necessary documentation required by the federal social security administration for such benefits. [1987 c 406 § 5.]

74.50.050 Treatment services. ***(Effective until January 1, 2020.)*** (1) The department shall establish a treatment program to provide, within available funds, alcohol and drug treatment services for indigent persons eligible under this chapter. The treatment services may include but are not limited to:

(a) Intensive inpatient treatment services;

(b) Recovery house treatment;

(c) Outpatient treatment and counseling, including assistance in obtaining employment, and including a living allowance while undergoing outpatient treatment. The living allowance may not be used to provide shelter to clients in a dormitory setting that does not require sobriety as a condition of residence. The living allowance shall be administered on the clients' behalf by the outpatient treatment facility or other social service agency designated by the department. The department is authorized to pay the facility a fee for administering this allowance.

(2) The department may require an applicant or recipient selecting treatment to complete inpatient and recovery house treatment when, in the judgment of a designated assessment center, such treatment is necessary prior to providing the outpatient program. [2002 c 64 § 1; 1989 1st ex.s. c 18 § 5; 1988 c 163 § 3; 1987 c 406 § 6.]

Additional notes found at www.leg.wa.gov

74.50.055 Treatment services—Eligibility. ***(Effective until January 1, 2020.)*** (1) A person shall not be eligible for treatment services under this chapter unless he or she:

(a) Meets the income and resource eligibility requirements for the medical care services program under *RCW 74.09.035(1)(a)(iv) and (v); and

(b) Is incapacitated from gainful employment, which incapacity will likely continue for a minimum of sixty days.

(2) First priority for receipt of treatment services shall be given to pregnant women and parents of young children.

(3) In order to rationally allocate treatment services, the department may establish by rule caseload ceilings and additional eligibility criteria, including the setting of priorities among classes of persons for the receipt of treatment services. Any such rules shall be consistent with any conditions or limitations contained in any appropriations for treatment services. [2011 1st sp.s. c 36 § 10; 1989 1st ex.s. c 18 § 4.]

***Reviser's note:** RCW 74.09.035 was amended by 2013 2nd sp.s. c 10 § 7, deleting subsection (1)(a)(iv) and (v), effective January 1, 2014.

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Additional notes found at www.leg.wa.gov

74.50.060 Shelter assistance program. ***(Effective until January 1, 2020.)*** The department shall establish a shelter assistance program to provide, within available funds, shelter for persons eligible under this chapter. "Shelter," "shelter support," or "shelter assistance" means a facility under contract to the department providing room and board in a supervised living arrangement, normally in a group or dormitory setting, to eligible recipients under this chapter. This may include supervised domiciliary facilities operated under the auspices of public or private agencies. No facility under contract to the department shall allow the consumption of alcoholic beverages on the premises. The department may contract with counties and cities for such shelter services. To the extent possible, the department shall not displace existing emergency shelter beds for use as shelter under this chapter. In areas of the state in which it is not feasible to develop shelters, due to low numbers of people needing shelter services, or in which sufficient numbers of shelter beds are not available, the department may provide shelter through an intensive protective payee program, unless the department grants an exception on an individual basis for less intense supervision. [2011 1st sp.s. c 36 § 33; 2010 1st sp.s. c 8 § 31; 1989 1st ex.s. c 18 § 3; 1988 c 163 § 4; 1987 c 406 § 7.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following 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

74.50.070 County multipurpose diagnostic center or detention center. ***(Effective until January 1, 2020.)*** (1) If a county elects to establish a multipurpose diagnostic center or detention center, the alcoholism and drug addiction assessment service under RCW 74.50.040 may be integrated into the services provided by such a center.

(2) The center may be financed from funds made available by the department for alcoholism and drug addiction assessments under this chapter and funds contained in the department's budget for detoxification, involuntary detention, and involuntary treatment under chapter 71.05 RCW. The center may be operated by the county or pursuant to contract between the county and a qualified organization. [2016 sp.s. c 29 § 429; 1987 c 406 § 8.]

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.

74.50.080 Rules—Discontinuance of service. ***(Effective until January 1, 2020.)*** The department by rule may establish procedures for the administration of the services provided by this chapter. Any rules shall be consistent with any conditions or limitations on appropriations provided for these services. If funds provided for any service under this chapter have been fully expended, the department shall immediately discontinue that service. [1989 1st ex.s. c 18 § 6; 1989 c 3 § 2.]

Additional notes found at www.leg.wa.gov

74.50.900 Short title. ***(Effective until January 1, 2020.)*** This chapter may be cited as the alcoholism and drug addiction treatment and support act. [1987 c 406 § 1.]

Chapter 74.55 RCW
CHILDREN'S SYSTEM OF CARE

Sections

74.55.010 Demonstration sites—Selection criteria—Definition. (1) The secretary shall establish demonstration sites for statewide implementation of a children's system of care. The demonstration sites shall be selected using the following criteria:

(a) The system administrator must be the recipient of funding by the federal center for mental health services for the purpose of developing a system of care for children with emotional and behavioral disorders;

(b) The system administrator must have established a process for ongoing input and coordination from the public health and safety network or networks established in the catchment area of the project; and

(c) The system administrator may be a project site under a Title IV-E waiver.

(2) For the purposes of this section, "children's system of care" means a centralized community care coordination system representing a philosophy about the way services should be delivered to children and their families, using existing resources of various child-serving agencies addressing the problems of children with emotional and behavioral disorders. The agencies represented may include providers of mental health services, drug and alcohol services, services for the developmentally disabled, county juvenile justice and state juvenile rehabilitation, child welfare, and special education. [2002 c 309 § 1.]

74.55.020 Goals. The goals of the children's system of care are to:

(1) Maintain a multiagency collaborative planning and system management mechanism at the state and local levels through the establishment of an oversight committee at the local level in accordance with the principles and program requirements associated with the federal center for children's mental health services;

(2) Recommend and make necessary financing changes to support individualized and flexible home and community-

based services and supports that are child centered, family driven, strength based, and culturally competent;

(3) Support a common screening tool and integrated care coordination system;

(4) Recommend and make necessary changes in contracting to support integrated service delivery;

(5) Promote and increase the expansion of system capacity for children and their families in each demonstration site community;

(6) Develop the capacity of family members to provide support for one another and to strengthen the family voice in system implementation through the utilization of a citizens' advisory board as described in *RCW 74.55.040 and through other outreach activities;

(7) Conduct research and draw on outside consultation to identify best practices to inform system development and refinement; and

(8) Demonstrate cost-effectiveness by creating system efficiencies that generate savings from the current level of expenditures for children being served by the participating agencies. These savings must be used to provide more services to the children involved in the project, or to serve more children. [2002 c 309 § 2.]

***Reviser's note:** RCW 74.55.040 expired January 1, 2004.

74.55.030 Collaboration contract or memorandum of understanding. The secretary shall assure collaboration with each demonstration site by child-serving entities operated directly by the department or by departmental contractors. A collaboration contract or memorandum of understanding shall be developed by the demonstration site and the secretary for that purpose. [2002 c 309 § 3.]

74.55.050 Funding—Report. Funding for children's system of care projects following the expiration of the federal grant shall be determined using the process established in RCW 74.14A.060 and funded children's system of care projects shall be included in the annual report required by that section. [2002 c 309 § 5.]

Chapter 74.60 RCW
HOSPITAL SAFETY NET ASSESSMENT

Sections

74.60.005 Purpose—Findings—Intent. ***(Expires July 1, 2023.)*** (1) The purpose of this chapter is to provide for a safety net assessment on certain Washington hospitals, which will be used solely to augment funding from all other sources and thereby support additional payments to hospitals for medicaid services as specified in this chapter.

(2) The legislature finds that federal health care reform will result in an expansion of medicaid enrollment in this state and an increase in federal financial participation.

(3) In adopting this chapter, it is the intent of the legislature:

(a) To impose a hospital safety net assessment to be used solely for the purposes specified in this chapter;

(b) To generate approximately one billion dollars per state fiscal biennium in new state and federal funds by disbursing all of that amount to pay for medicaid hospital services and grants to certified public expenditure and critical access hospitals, except costs of administration as specified in this chapter, in the form of additional payments to hospitals and managed care plans, which may not be a substitute for payments from other sources, but which include quality improvement incentive payments under RCW 74.09.611;

(c) To generate two hundred ninety-two million dollars per biennium during the 2019-2021 and 2021-2023 biennia in new funds to be used in lieu of state general fund payments for medicaid hospital services;

(d) That the total amount assessed not exceed the amount needed, in combination with all other available funds, to support the payments authorized by this chapter;

(e) To condition the assessment on receiving federal approval for receipt of additional federal financial participation and on continuation of other funding sufficient to maintain aggregate payment levels to hospitals for inpatient and outpatient services covered by medicaid, including fee-for-service and managed care, at least at the rates the state paid for those services on July 1, 2015, as adjusted for current enrollment and utilization; and

(f) For each of the two biennia starting with fiscal year 2020 to generate:

(i) Four million dollars for new integrated evidence-based psychiatry residency program slots that did not receive state funding prior to 2016 at the integrated psychiatry residency program at the University of Washington; and

(ii) Eight million two hundred thousand dollars for family medicine residency program slots that did not receive state funding prior to 2016, as directed through the family medicine residency network at the University of Washington, for slots where residents are employed by hospitals. [2019 c 318 § 1; 2017 c 228 § 1; 2015 2nd sp.s. c 5 § 1; 2013 2nd sp.s. c 17 § 1; 2010 1st sp.s. c 30 § 1.]

Effective date—2019 c 318: "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, 2019." [2019 c 318 § 9.]

Effective date—2017 c 228: "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, 2017." [2017 c 228 § 15.]

Effective date—2015 2nd sp.s. c 5: "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 [June 30, 2015]." [2015 2nd sp.s. c 5 § 12.]

Effective date—2013 2nd sp.s. c 17: "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 [June 30, 2013]." [2013 2nd sp.s. c 17 § 20.]

74.60.010 Definitions. ***(Expires July 1, 2023.)*** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the health care authority.

(2) "Base year" for medicaid payments for state fiscal year 2017 is state fiscal year 2014. For each following year's calculations, the base year must be updated to the next following year.

(3) "Bordering city hospital" means a hospital as defined in WAC 182-550-1050 and bordering cities as described in WAC 182-501-0175, or successor rules.

(4) "Certified public expenditure hospital" means a hospital participating in the authority's certified public expenditure payment program as described in WAC 182-550-4650 or successor rule. The eligibility of such hospitals to receive grants under RCW 74.60.090 solely from funds generated under this chapter must remain in effect through the date specified in RCW 74.60.901 and must not be affected by any modification or termination of the federal certified public expenditure program, or reduced by the amount of any federal funds no longer available for that purpose.

(5) "Critical access hospital" means a hospital as described in RCW 74.09.5225.

(6) "Director" means the director of the health care authority.

(7) "Eligible new prospective payment hospital" means a prospective payment hospital opened after January 1, 2009, for which a full year of cost report data as described in RCW 74.60.030(2) and a full year of medicaid base year data required for the calculations in RCW 74.60.120(3) are available.

(8) "Fund" means the hospital safety net assessment fund established under RCW 74.60.020.

(9) "Hospital" means a facility licensed under chapter 70.41 RCW.

(10) "Long-term acute care hospital" means a hospital which has an average inpatient length of stay of greater than twenty-five days as determined by the department of health.

(11) "Managed care organization" means an organization having a certificate of authority or certificate of registration from the office of the insurance commissioner that contracts with the authority under a comprehensive risk contract to provide prepaid health care services to eligible clients under the authority's medicaid managed care programs, including the healthy options program.

(12) "Medicaid" means the medical assistance program as established in Title XIX of the social security act and as administered in the state of Washington by the authority.

(13) "Medicare cost report" means the medicare cost report, form 2552, or successor document.

(14) "Nonmedicare hospital inpatient day" means total hospital inpatient days less medicare inpatient days, including medicare days reported for medicare managed care plans, as reported on the medicare cost report, form 2552, or successor forms, excluding all skilled and nonskilled nursing facility days, skilled and nonskilled swing bed days, nursery days, observation bed days, hospice days, home health agency days, and other days not typically associated with an acute care inpatient hospital stay.

(15) "Outpatient" means services provided classified as ambulatory payment classification services or successor payment methodologies as defined in *WAC 182-550-7050 or successor rule and applies to fee-for-service payments and managed care encounter data.

(16) "Prospective payment system hospital" means a hospital reimbursed for inpatient and outpatient services provided to medicaid beneficiaries under the inpatient prospective payment system and the outpatient prospective payment system as defined in WAC 182-550-1050 or successor rule. For purposes of this chapter, prospective payment system hospital does not include a hospital participating in the certified public expenditure program or a bordering city hospital located outside of the state of Washington and in one of the bordering cities listed in WAC 182-501-0175 or successor rule.

(17) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW.

(18) "Rehabilitation hospital" means a medicare-certified freestanding inpatient rehabilitation facility.

(19) "Small rural disproportionate share hospital payment" means a payment made in accordance with WAC 182-550-5200 or successor rule.

(20) "Upper payment limit" means the aggregate federal upper payment limit on the amount of the medicaid payment for which federal financial participation is available for a class of service and a class of health care providers, as specified in 42 C.F.R. Part 47, as separately determined for inpatient and outpatient hospital services. [2019 c 318 § 2; 2017 c 228 § 2; 2013 2nd sp.s. c 17 § 2; 2010 1st sp.s. c 30 § 2.]

***Reviser's note:** WAC 182-550-7050 was repealed by WSR 14-12-047.

Effective date—2019 c 318: See note following RCW 74.60.005.

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.020 Hospital safety net assessment fund. ***(Expires July 1, 2023.)*** (1) A dedicated fund is hereby established within the state treasury to be known as the hospital safety net assessment fund. The purpose and use of the fund shall be to receive and disburse funds, together with accrued interest, in accordance with this chapter. Moneys in the fund, including interest earned, shall not be used or disbursed for any purposes other than those specified in this chapter. Any amounts expended from the fund that are later recouped by the authority on audit or otherwise shall be returned to the fund.

(a) Any unexpended balance in the fund at the end of a fiscal year shall carry over into the following fiscal year or that fiscal year and the following fiscal year and shall be applied to reduce the amount of the assessment under RCW 74.60.050(1)(c).

(b) Any amounts remaining in the fund after July 1, 2023, shall be refunded to hospitals, pro rata according to the amount paid by the hospital since July 1, 2013, subject to the limitations of federal law.

(2) All assessments, interest, and penalties collected by the authority under RCW 74.60.030 and 74.60.050 shall be deposited into the fund.

(3) Disbursements from the fund are conditioned upon appropriation and the continued availability of other funds sufficient to maintain aggregate payment levels to hospitals for inpatient and outpatient services covered by medicaid, including fee-for-service and managed care, at least at the levels the state paid for those services on July 1, 2015, as adjusted for current enrollment and utilization.

(4) Disbursements from the fund may be made only:

(a) To make payments to hospitals and managed care plans as specified in this chapter;

(b) To refund erroneous or excessive payments made by hospitals pursuant to this chapter;

(c) For one million dollars per biennium for payment of administrative expenses incurred by the authority in performing the activities authorized by this chapter;

(d) For two hundred ninety-two million dollars per biennium, to be used in lieu of state general fund payments for medicaid hospital services, provided that if the full amount of the payments required under RCW 74.60.120 and 74.60.130 cannot be distributed in a given fiscal year, this amount must be reduced proportionately;

(e) To repay the federal government for any excess payments made to hospitals from the fund if the assessments or payment increases set forth in this chapter are deemed out of compliance with federal statutes and regulations in a final determination by a court of competent jurisdiction with all appeals exhausted. In such a case, the authority may require hospitals receiving excess payments to refund the payments in question to the fund. The state in turn shall return funds to the federal government in the same proportion as the original financing. If a hospital is unable to refund payments, the state shall develop either a payment plan, or deduct moneys from future medicaid payments, or both;

(f) To pay an amount sufficient, when combined with the maximum available amount of federal funds necessary to provide a one percent increase in medicaid hospital inpatient rates to hospitals eligible for quality improvement incentives under RCW 74.09.611. By May 16, 2018, and by each May 16 thereafter, the authority, in cooperation with the department of health, must verify that each hospital eligible to receive quality improvement incentives under the terms of this chapter is in substantial compliance with the reporting requirements in RCW 43.70.052 and 70.01.040 for the prior period. For the purposes of this subsection, "substantial compliance" means, in the prior period, the hospital has submitted at least nine of the twelve monthly reports by the due date. The authority must distribute quality improvement incentives to hospitals that have met these requirements beginning July 1 of 2018 and each July 1 thereafter; and

(g) For each state fiscal year 2020 through 2023 to generate:

(i) Two million dollars for integrated evidence-based psychiatry residency program slots that did not receive state funding prior to 2016 at the integrated psychiatry residency program at the University of Washington; and

(ii) Four million one hundred thousand dollars for family medicine residency program slots that did not receive state funding prior to 2016, as directed through the family medicine residency network at the University of Washington, for slots where residents are employed by hospitals. [2019 c 318 § 3; 2017 c 228 § 3; 2015 2nd sp.s. c 5 § 2; 2013 2nd sp.s. c 17 § 3; 2011 1st sp.s. c 35 § 1; 2010 1st sp.s. c 30 § 3.]

Effective date—2019 c 318: See note following RCW 74.60.005.

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

Expiration date—2011 1st sp.s. c 35: "Sections 1 and 2 of this act expire July 1, 2013." [2011 1st sp.s. c 35 § 3.]

Effective date—2011 1st sp.s. c 35: "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, 2011." [2011 1st sp.s. c 35 § 4.]

74.60.030 Assessments. ***(Expires July 1, 2023.)*** (1)(a) Upon satisfaction of the conditions in RCW 74.60.150(1), and so long as the conditions in RCW 74.60.150(2) have not occurred, an assessment is imposed as set forth in this subsection. Assessment notices must be sent on or about thirty days prior to the end of each quarter and payment is due thirty days thereafter.

(b) Effective July 1, 2015, and except as provided in RCW 74.60.050:

(i) Each prospective payment system hospital, except psychiatric and rehabilitation hospitals, shall pay a quarterly assessment. Each quarterly assessment shall be no more than one quarter of three hundred eighty dollars for each annual nonmedicare hospital inpatient day, up to a maximum of fifty-four thousand days per year. For each nonmedicare hospital inpatient day in excess of fifty-four thousand days, each prospective payment system hospital shall pay a quarterly assessment of one quarter of seven dollars for each such day, unless such assessment amount or threshold needs to be modified to comply with applicable federal regulations;

(ii) Each critical access hospital shall pay a quarterly assessment of one quarter of ten dollars for each annual nonmedicare hospital inpatient day;

(iii) Each psychiatric hospital shall pay a quarterly assessment of no more than one quarter of seventy-four dollars for each annual nonmedicare hospital inpatient day; and

(iv) Each rehabilitation hospital shall pay a quarterly assessment of no more than one quarter of seventy-four dollars for each annual nonmedicare hospital inpatient day.

(2) The authority shall determine each hospital's annual nonmedicare hospital inpatient days by summing the total reported nonmedicare hospital inpatient days for each hospital that is not exempt from the assessment under RCW 74.60.040. The authority shall obtain inpatient data from the hospital's 2552 cost report data file or successor data file available through the centers for medicare and medicaid services, as of a date to be determined by the authority. For state fiscal year 2021, the authority shall use cost report data for hospitals' fiscal years ending in 2017. For subsequent years, the hospitals' next succeeding fiscal year cost report data must be used.

(a) With the exception of a prospective payment system hospital commencing operations after January 1, 2009, for any hospital without a cost report for the relevant fiscal year, the authority shall work with the affected hospital to identify

appropriate supplemental information that may be used to determine annual nonmedicare hospital inpatient days.

(b) A prospective payment system hospital commencing operations after January 1, 2009, must be assessed in accordance with this section after becoming an eligible new prospective payment system hospital as defined in RCW 74.60.010. [2019 c 318 § 4; 2017 c 228 § 4; 2015 2nd sp.s. c 5 § 3; 2014 c 143 § 1; 2013 2nd sp.s. c 17 § 4; 2010 1st sp.s. c 30 § 4.]

Effective date—2019 c 318: See note following RCW 74.60.005.

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2014 c 143: "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 28, 2014]." [2014 c 143 § 4.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.040 Exemptions. ***(Expires July 1, 2023.)*** The following hospitals are exempt from any assessment under this chapter provided that if and to the extent any exemption is held invalid by a court of competent jurisdiction or by the centers for medicare and medicaid services, hospitals previously exempted shall be liable for assessments due after the date of final invalidation:

(1) Hospitals owned or operated by an agency of federal or state government, including but not limited to western state hospital and eastern state hospital;

(2) Washington public hospitals that participate in the certified public expenditure program;

(3) Hospitals that do not charge directly or indirectly for hospital services; and

(4) Long-term acute care hospitals. [2010 1st sp.s. c 30 § 5.]

74.60.050 Notices of assessment—Administration and collection. ***(Expires July 1, 2023.)*** (1) The authority, in cooperation with the office of financial management, shall develop rules for determining the amount to be assessed to individual hospitals, notifying individual hospitals of the assessed amount, and collecting the amounts due. Such rule making shall specifically include provision for:

(a) Transmittal of notices of assessment by the authority to each hospital informing the hospital of its nonmedicare hospital inpatient days and the assessment amount due and payable;

(b) Interest on delinquent assessments at the rate specified in RCW 82.32.050; and

(c) Adjustment of the assessment amounts in accordance with subsection (3) of this section.

(2) For any hospital failing to make an assessment payment within ninety days of its due date, the authority may offset an amount from payments scheduled to be made by the authority to the hospital, reflecting the assessment payments owed by the hospital plus any interest. The authority shall deposit these offset funds into the dedicated hospital safety net assessment fund.

(3) For each state fiscal year, the assessment amounts established under RCW 74.60.030 must be adjusted as follows:

(a) If sufficient other funds, including federal funds, are available to make the payments required under this chapter and fund the state portion of the quality incentive payments under RCW 74.09.611 and 74.60.020(4)(f) without utilizing the full assessment under RCW 74.60.030, the authority shall reduce the amount of the assessment to the minimum levels necessary to support those payments;

(b) If the total amount of inpatient and outpatient supplemental payments under RCW 74.60.120 is in excess of the upper payment limits and the entire excess amount cannot be disbursed by additional payments to managed care organizations under RCW 74.60.130, the authority shall proportionately reduce future assessments on prospective payment hospitals to the level necessary to generate additional payments to hospitals that are consistent with the upper payment limit plus the maximum permissible amount of additional payments to managed care organizations under RCW 74.60.130;

(c) If the amount of payments to managed care organizations under RCW 74.60.130 cannot be distributed because of failure to meet federal actuarial soundness or utilization requirements or other federal requirements, the authority shall apply the amount that cannot be distributed to reduce future assessments to the level necessary to generate additional payments to managed care organizations that are consistent with federal actuarial soundness or utilization requirements or other federal requirements;

(d) If required in order to obtain federal matching funds, the maximum number of nonmedicare inpatient days at the higher rate provided under RCW 74.60.030(1)(b)(i) may be adjusted in order to comply with federal requirements;

(e) If the number of nonmedicare inpatient days applied to the rates provided in RCW 74.60.030 will not produce sufficient funds to support the payments required under this chapter and the state portion of the quality incentive payments under RCW 74.09.611 and 74.60.020(4)(f), the assessment rates provided in RCW 74.60.030 may be increased proportionately by category of hospital to amounts no greater than necessary in order to produce the required level of funds needed to make the payments specified in this chapter and the state portion of the quality incentive payments under RCW 74.09.611 and 74.60.020(4)(f); and

(f) Any actual or estimated surplus remaining in the fund at the end of the fiscal year must be applied to reduce the assessment amount for the subsequent fiscal year or that fiscal year and the following fiscal years prior to and including fiscal year 2023.

(4)(a) Any adjustment to the assessment amounts pursuant to this section, and the data supporting such adjustment, including, but not limited to, relevant data listed in (b) of this subsection, must be submitted to the Washington state hospital association for review and comment at least sixty calendar days prior to implementation of such adjusted assessment amounts. Any review and comment provided by the Washington state hospital association does not limit the ability of the Washington state hospital association or its members to challenge an adjustment or other action by the authority that is not made in accordance with this chapter.

(b) The authority shall provide the following data to the Washington state hospital association sixty days before implementing any revised assessment levels, detailed by fiscal year, beginning with fiscal year 2011 and extending to the most recent fiscal year, except in connection with the initial assessment under this chapter:

(i) The fund balance;

(ii) The amount of assessment paid by each hospital;

(iii) The state share, federal share, and total annual medicaid fee-for-service payments for inpatient hospital services made to each hospital under RCW 74.60.120, and the data used to calculate the payments to individual hospitals under that section;

(iv) The state share, federal share, and total annual medicaid fee-for-service payments for outpatient hospital services made to each hospital under RCW 74.60.120, and the data used to calculate annual payments to individual hospitals under that section;

(v) The annual state share, federal share, and total payments made to each hospital under each of the following programs: Grants to certified public expenditure hospitals under RCW 74.60.090, for critical access hospital payments under RCW 74.60.100; and disproportionate share programs under RCW 74.60.110;

(vi) The data used to calculate annual payments to individual hospitals under (b)(v) of this subsection; and

(vii) The amount of payments made to managed care plans under RCW 74.60.130, including the amount representing additional premium tax, and the data used to calculate those payments.

(c) On a monthly basis, the authority shall provide the Washington state hospital association the amount of payments made to managed care plans under RCW 74.60.130, including the amount representing additional premium tax, and the data used to calculate those payments. [2019 c 318 § 5; 2017 c 228 § 5; 2015 2nd sp.s. c 5 § 4; 2013 2nd sp.s. c 17 § 5; 2010 1st sp.s. c 30 § 6.]

Effective date—2019 c 318: See note following RCW 74.60.005.

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.060 Local assessments or taxes not authorized. ***(Expires July 1, 2023.)*** Nothing in this chapter shall be construed to authorize any unit of local government to impose a tax or assessment on hospitals, including but not limited to a tax or assessment measured by a hospital's income, earnings, bed days, or other similar measures. [2010 1st sp.s. c 30 § 7.]

74.60.070 Assessment part of operating overhead. ***(Expires July 1, 2023.)*** The incidence and burden of assessments imposed under this chapter shall be on hospitals and the expense associated with the assessments shall constitute a part of the operating overhead of hospitals. Hospitals shall not increase charges or billings to patients or third-party payers as a result of the assessments under this chapter. The authority may require hospitals to submit certified statements by their chief financial officers or equivalent officials attesting that they have not increased charges or billings as a result of the assessments. [2013 2nd sp.s. c 17 § 6; 2010 1st sp.s. c 30 § 8.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.080 Disbursements from hospital safety net assessment fund. ***(Expires July 1, 2023.)*** In each fiscal year and upon satisfaction of the conditions in RCW 74.60.150(1), after deducting or reserving amounts authorized to be disbursed under RCW 74.60.020(4) (d), (e), and (f), disbursements from the fund must be made as follows:

(1) For grants to certified public expenditure hospitals in accordance with RCW 74.60.090;

(2) For payments to critical access hospitals in accordance with RCW 74.60.100;

(3) For small rural disproportionate share payments in accordance with RCW 74.60.110;

(4) For payments to hospitals under RCW 74.60.120; and

(5) For payments to managed care organizations under RCW 74.60.130 for the provision of hospital services. [2013 2nd sp.s. c 17 § 7; 2010 1st sp.s. c 30 § 9.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.090 Grants to certified public expenditure hospitals. ***(Expires July 1, 2023.)*** (1) In each fiscal year commencing upon satisfaction of the applicable conditions in RCW 74.60.150(1), funds must be disbursed from the fund and the authority shall make grants to certified public expenditure hospitals, which shall not be considered payments for hospital services, as follows:

(a) University of Washington medical center: Ten million five hundred fifty-five thousand dollars in state fiscal year 2020 and up to twelve million fifty-five thousand dollars in state fiscal year 2021 through 2023 paid as follows, except if the full amount of the payments required under RCW 74.60.120(1) and 74.60.130 cannot be distributed in a given fiscal year, the amounts in this subsection must be reduced proportionately:

(i) Four million four hundred fifty-five thousand dollars in state fiscal years 2020 through 2023, except that from state fiscal year 2021 through 2023, if northwest hospital is ineligible to participate in this chapter as a prospective payment hospital, the amount per state fiscal year must be five million nine hundred fifty-five thousand dollars;

(ii) Two million dollars to integrated, evidence-based psychiatry residency program slots that did not receive state funding prior to 2016, at the integrated psychiatry residency program at the University of Washington; and

(iii) Four million one hundred thousand dollars to family medicine residency program slots that did not receive state funding prior to 2016, as directed through the family medicine residency network at the University of Washington, for slots where residents are employed by hospitals;

(b) Harborview medical center: Ten million two hundred sixty thousand dollars in each state fiscal year 2020 through 2023, except if the full amount of the payments required under RCW 74.60.120(1) and 74.60.130 cannot be distributed in a given fiscal year, the amounts in this subsection must be reduced proportionately;

(c) All other certified public expenditure hospitals: Five million six hundred fifteen thousand dollars in each state fiscal year 2020 through 2023, except if the full amount of the payments required under RCW 74.60.120(1) and 74.60.130 cannot be distributed in a given fiscal year, the amounts in this subsection must be reduced proportionately. The amount of payments to individual hospitals under this subsection must be determined using a methodology that provides each hospital with a proportional allocation of the group's total amount of medicaid and state children's health insurance program payments determined from claims and encounter data using the same general methodology set forth in RCW 74.60.120 (3) and (4).

(2) Payments must be made quarterly, before the end of each quarter, taking the total disbursement amount and dividing by four to calculate the quarterly amount. The authority shall provide a quarterly report of such payments to the Washington state hospital association. [2019 c 318 § 6; 2017 c 228 § 6; 2015 2nd sp.s. c 5 § 5; 2013 2nd sp.s. c 17 § 8; 2011 1st sp.s. c 35 § 2; 2010 1st sp.s. c 30 § 10.]

Effective date—2019 c 318: See note following RCW 74.60.005.

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

Expiration date—Effective date—2011 1st sp.s. c 35: See notes following RCW 74.60.020.

74.60.100 Critical access hospital payments. ***(Expires July 1, 2023.)*** In each fiscal year commencing upon satisfaction of the conditions in RCW 74.60.150(1), the authority shall make access payments to critical access hospitals that do not qualify for or receive a small rural disproportionate share hospital payment in a given fiscal year in the total amount of two million thirty-eight thousand dollars from the fund. The amount of payments to individual hospitals under this section must be determined using a methodology that provides each hospital with a proportional allocation of the group's total amount of medicaid and state children's health insurance program payments determined from claims and encounter data using the same general methodology set forth in RCW 74.60.120 (3) and (4). Payments must be made after the authority determines a hospital's payments under RCW 74.60.110. These payments shall be in addition to any other amount payable with respect to services provided by critical access hospitals and shall not reduce any other payments to critical access hospitals. The authority shall provide a report of such payments to the Washington state hospital association within thirty days after payments are made. [2017 c 228 § 7; 2015 2nd sp.s. c 5 § 6; 2013 2nd sp.s. c 17 § 9; 2010 1st sp.s. c 30 § 11.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.110 Small rural disproportionate share hospital payments. ***(Expires July 1, 2023.)*** In each fiscal year commencing upon satisfaction of the applicable conditions in RCW 74.60.150(1), one million nine hundred nine thousand dollars must be distributed from the fund and, with available federal matching funds, paid to hospitals eligible for small rural disproportionate share payments under WAC 182-550-4900 or successor rule. Payments must be made directly to hospitals by the authority in accordance with that regulation. The authority shall provide a report of such payments to the Washington state hospital association within thirty days after payments are made. [2013 2nd sp.s. c 17 § 10; 2010 1st sp.s. c 30 § 12.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.120 Direct supplemental payments to hospitals. ***(Expires July 1, 2023.)*** (1) In each state fiscal year, commencing upon satisfaction of the applicable conditions in RCW 74.60.150(1), the authority shall make supplemental payments directly to Washington hospitals, separately for inpatient and outpatient fee-for-service medicaid services, as follows unless there are federal restrictions on doing so. If there are federal restrictions, to the extent allowed, funds that cannot be paid under (a) of this subsection, should be paid under (b) of this subsection, and funds that cannot be paid under (b) of this subsection, shall be paid under (a) of this subsection:

(a) For inpatient fee-for-service payments for prospective payment hospitals other than psychiatric or rehabilitation hospitals, twenty-nine million eight hundred ninety-two thousand five hundred dollars per state fiscal year plus federal matching funds;

(b) For outpatient fee-for-service payments for prospective payment hospitals other than psychiatric or rehabilitation hospitals, thirty million dollars per state fiscal year plus federal matching funds;

(c) For inpatient fee-for-service payments for psychiatric hospitals, eight hundred seventy-five thousand dollars per state fiscal year plus federal matching funds;

(d) For inpatient fee-for-service payments for rehabilitation hospitals, two hundred twenty-five thousand dollars per state fiscal year plus federal matching funds;

(e) For inpatient fee-for-service payments for border hospitals, two hundred fifty thousand dollars per state fiscal year plus federal matching funds; and

(f) For outpatient fee-for-service payments for border hospitals, two hundred fifty thousand dollars per state fiscal year plus federal matching funds.

(2) If the amount of inpatient or outpatient payments under subsection (1) of this section, when combined with federal matching funds, exceeds the upper payment limit, payments to each category of hospital in subsection (1)(a) through (f) of this section must be reduced proportionately to a level where the total payment amount is consistent with the upper payment limit. If funds in excess of the upper payment limit cannot be paid under RCW 74.60.130 and if the payment amount in excess of the upper payment limit exceeds fifteen million dollars, the authority shall increase the prospective payment system hospital outpatient hospital payment rate, for hospitals using the safety net funding and federal matching funds that would otherwise have been used to fund the payments under subsection (1) of this section that exceed the upper payment limit. By January 1st of each year,

the authority shall provide to the Washington state hospital association an upper payment limit analysis using the latest available claims data for the historic periods in the calculation. If the analysis shows the payments are projected to exceed the upper payment limit by at least fifteen million dollars, the authority shall initiate an outpatient rate increase effective July 1st of that year.

(3) The amount of such fee-for-service inpatient payments to individual hospitals within each of the categories identified in subsection (1)(a), (c), (d), and (e) of this section must be determined by:

(a) Totaling the inpatient fee-for-service claims payments and inpatient managed care encounter rate payments for each hospital during the base year;

(b) Totaling the inpatient fee-for-service claims payments and inpatient managed care encounter rate payments for all hospitals during the base year; and

(c) Using the amounts calculated under (a) and (b) of this subsection to determine an individual hospital's percentage of the total amount to be distributed to each category of hospital.

(4) The amount of such fee-for-service outpatient payments to individual hospitals within each of the categories identified in subsection (1)(b) and (f) of this section must be determined by:

(a) Totaling the outpatient fee-for-service claims payments and outpatient managed care encounter rate payments for each hospital during the base year;

(b) Totaling the outpatient fee-for-service claims payments and outpatient managed care encounter rate payments for all hospitals during the base year; and

(c) Using the amounts calculated under (a) and (b) of this subsection to determine an individual hospital's percentage of the total amount to be distributed to each category of hospital.

(5) Sixty days before the first payment in each subsequent fiscal year, the authority shall provide each hospital and the Washington state hospital association with an explanation of how the amounts due to each hospital under this section were calculated.

(6) Payments must be made in quarterly installments on or about the last day of every quarter.

(7) A prospective payment system hospital commencing operations after January 1, 2009, is eligible to receive payments in accordance with this section after becoming an eligible new prospective payment system hospital as defined in RCW 74.60.010.

(8) Payments under this section are supplemental to all other payments and do not reduce any other payments to hospitals. [2019 c 318 § 7; 2017 c 228 § 8; 2015 2nd sp.s. c 5 § 7; 2014 c 143 § 2; 2013 2nd sp.s. c 17 § 11; 2010 1st sp.s. c 30 § 13.]

Effective date—2019 c 318: See note following RCW 74.60.005.

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2014 c 143: See note following RCW 74.60.030.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.130 Managed care capitation payments. ***(Expires July 1, 2023.)*** (1) For state fiscal year 2016 and for each subsequent fiscal year, commencing within thirty days after satisfaction of the conditions in RCW 74.60.150(1) and subsection (5) of this section, the authority shall increase capitation payments in a manner consistent with federal contracting requirements to managed care organizations by an amount at least equal to the amount available from the fund after deducting disbursements authorized by RCW 74.60.020 (4) (c) through (f) and payments required by RCW 74.60.080 through 74.60.120. When combined with applicable federal matching funds, the capitation payment under this subsection must be at least three hundred sixty million dollars per year. The initial payment following satisfaction of the conditions in RCW 74.60.150(1) must include all amounts due from July 1, 2015, to the end of the calendar month during which the conditions in RCW 74.60.150(1) are satisfied. Subsequent payments shall be made monthly.

(2) Payments to individual managed care organizations shall be determined by the authority based on each organization's or network's enrollment relative to the anticipated total enrollment in each program for the fiscal year in question, the anticipated utilization of hospital services by an organization's or network's medicaid enrollees, and such other factors as are reasonable and appropriate to ensure that purposes of this chapter are met.

(3) If the federal government determines that total payments to managed care organizations under this section exceed what is permitted under applicable medicaid laws and regulations, payments must be reduced to levels that meet such requirements, and the balance remaining must be applied as provided in RCW 74.60.050. Further, in the event a managed care organization is legally obligated to repay amounts distributed to hospitals under this section to the state or federal government, a managed care organization may recoup the amount it is obligated to repay under the medicaid program from individual hospitals by not more than the amount of overpayment each hospital received from that managed care organization.

(4) Payments under this section do not reduce the amounts that otherwise would be paid to managed care organizations: PROVIDED, That such payments are consistent with actuarial soundness certification and enrollment.

(5) Before making such payments, the authority shall require medicaid managed care organizations to comply with the following requirements:

(a) All payments to managed care organizations under this chapter must be expended for hospital services provided by Washington hospitals, which for purposes of this section includes psychiatric and rehabilitation hospitals, in a manner consistent with the purposes and provisions of this chapter, and must be equal to all increased capitation payments under this section received by the organization or network, consistent with actuarial certification and enrollment, less an allowance for any estimated premium taxes the organization is required to pay under Title 48 RCW associated with the payments under this chapter;

(b) Managed care organizations shall expend the increased capitation payments under this section in a manner consistent with the purposes of this chapter, with the initial expenditures to hospitals to be made within thirty days of receipt of payment from the authority. Subsequent expenditures by the managed care plans are to be made before the end of the quarter in which funds are received from the authority;

(c) Providing that any delegation or attempted delegation of an organization's or network's obligations under agreements with the authority do not relieve the organization or network of its obligations under this section and related contract provisions.

(6) No hospital or managed care organizations may use the payments under this section to gain advantage in negotiations.

(7) No hospital has a claim or cause of action against a managed care organization for monetary compensation based on the amount of payments under subsection (5) of this section.

(8) If funds cannot be used to pay for services in accordance with this chapter the managed care organization or network must return the funds to the authority which shall return them to the hospital safety net assessment fund. [2017 c 228 § 9; 2015 2nd sp.s. c 5 § 8; 2014 c 143 § 3; 2013 2nd sp.s. c 17 § 12; 2010 1st sp.s. c 30 § 14.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2014 c 143: See note following RCW 74.60.030.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.140 Multihospital locations, new hospitals, and changes in ownership. ***(Expires July 1, 2023.)*** (1) If an entity owns or operates more than one hospital subject to assessment under this chapter, the entity shall pay the assessment for each hospital separately. However, if the entity operates multiple hospitals under a single medicaid provider number, it may pay the assessment for the hospitals in the aggregate.

(2) Notwithstanding any other provision of this chapter, if a hospital subject to the assessment imposed under this chapter ceases to conduct hospital operations throughout a state fiscal year, the assessment for the quarter in which the cessation occurs shall be adjusted by multiplying the assessment computed under RCW 74.60.030 by a fraction, the numerator of which is the number of days during the year which the hospital conducts, operates, or maintains the hospital and the denominator of which is three hundred sixty-five. Immediately prior to ceasing to conduct, operate, or maintain a hospital, the hospital shall pay the adjusted assessment for the fiscal year to the extent not previously paid.

(3) Notwithstanding any other provision of this chapter, if a hospital previously subject to assessment is sold or transferred to another entity and remains subject to assessment, the assessment for that hospital shall be computed based upon the cost report data previously submitted by that hospital. The assessment shall be allocated between the transferor and transferee based on the number of days within the assessment period that each owned, operated, or maintained the hospital. [2013 2nd sp.s. c 17 § 14; 2010 1st sp.s. c 30 § 16.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.150 Conditions. ***(Expires July 1, 2023.)*** (1) The assessment, collection, and disbursement of funds under this chapter shall be conditional upon:

(a) Final approval by the centers for medicare and medicaid services of any state plan amendments or waiver requests that are necessary in order to implement the applicable sections of this chapter including, if necessary, waiver of the broad-based or uniformity requirements as specified under section 1903(w)(3)(E) of the federal social security act and 42 C.F.R. 433.68(e);

(b) To the extent necessary, amendment of contracts between the authority and managed care organizations in order to implement this chapter; and

(c) Certification by the office of financial management that appropriations have been adopted that fully support the rates established in this chapter for the upcoming fiscal year.

(2) This chapter does not take effect or ceases to be imposed, and any moneys remaining in the fund shall be refunded to hospitals in proportion to the amounts paid by such hospitals, if and to the extent that any of the following conditions occur:

(a) The federal department of health and human services and a court of competent jurisdiction makes a final determination, with all appeals exhausted, that any element of this chapter, other than RCW 74.60.100, cannot be validly implemented;

(b) Funds generated by the assessment for payments to prospective payment hospitals or managed care organizations are determined to be not eligible for federal matching funds in addition to those federal funds that would be received without the assessment, or the federal government replaces medicaid matching funds with a block grant or grants;

(c) Other funding sufficient to maintain aggregate payment levels to hospitals for inpatient and outpatient services covered by medicaid, including fee-for-service and managed care, at least at the rates the state paid for those services on July 1, 2015, as adjusted for current enrollment and utilization is not appropriated or available;

(d) Payments required by this chapter are reduced, except as specifically authorized in this chapter, or payments are not made in substantial compliance with the time frames set forth in this chapter; or

(e) The fund is used as a substitute for or to supplant other funds, except as authorized by RCW 74.60.020. [2017 c 228 § 10; 2015 2nd sp.s. c 5 § 9; 2013 2nd sp.s. c 17 § 15; 2010 1st sp.s. c 30 § 17.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.160 Contracting with health care authority. ***(Expires July 1, 2023.)*** (1) The legislature intends to provide the hospitals with an opportunity to contract with the authority each fiscal biennium to protect the hospitals from future legislative action during the biennium that could result in hospitals receiving less from supplemental payments, increased managed care payments, disproportionate share hospital payments, or access payments than the hospitals expected to receive in return for the assessment based on the biennial appropriations and assessment legislation.

(2) Each odd-numbered year after enactment of the biennial omnibus operating appropriations act, the authority shall

extend the existing contract for the period of the fiscal biennium beginning July 1st with a hospital that is required to pay the assessment under this chapter or shall offer to enter into a contract with any hospital subject to this chapter that has not previously been a party to a contract or whose contract has expired. The contract must include the following terms:

(a) The authority must agree not to do any of the following:

(i) Increase the assessment from the level set by the authority pursuant to this chapter on the first day of the contract period for reasons other than those allowed under *RCW 74.60.050(2)(e);

(ii) Reduce aggregate payment levels to hospitals for inpatient and outpatient services covered by medicaid, including fee-for-service and managed care, adjusting for changes in enrollment and utilization, from the levels the state paid for those services on the first day of the contract period;

(iii) For critical access hospitals only, reduce the levels of disproportionate share hospital payments under RCW 74.60.110 or access payments under RCW 74.60.100 for all critical access hospitals below the levels specified in those sections on the first day of the contract period;

(iv) For prospective payment system, psychiatric, and rehabilitation hospitals only, reduce the levels of supplemental payments under RCW 74.60.120 for all prospective payment system hospitals below the levels specified in that section on the first day of the contract period unless the supplemental payments are reduced under RCW 74.60.120(2);

(v) For prospective payment system, psychiatric, and rehabilitation hospitals only, reduce the increased capitation payments to managed care organizations under RCW 74.60.130 below the levels specified in that section on the first day of the contract period unless the managed care payments are reduced under RCW 74.60.130(3); or

(vi) Except as specified in this chapter, use assessment revenues for any other purpose than to secure federal medicaid matching funds to support payments to hospitals for medicaid services; and

(b) As long as payment levels are maintained as required under this chapter, the hospital must agree not to challenge the authority's reduction of hospital reimbursement rates to July 1, 2009, levels, which results from the elimination of assessment supported rate restorations and increases, under 42 U.S.C. Sec. 1396a(a)(30)(a) either through administrative appeals or in court during the period of the contract.

(3) If a court finds that the authority has breached an agreement with a hospital under subsection (2)(a) of this section, the authority:

(a) Must immediately refund any assessment payments made subsequent to the breach by that hospital upon receipt; and

(b) May discontinue supplemental payments, increased managed care payments, disproportionate share hospital payments, and access payments made subsequent to the breach for the hospital that are required under this chapter.

(4) The remedies provided in this section are not exclusive of any other remedies and rights that may be available to the hospital whether provided in this chapter or otherwise in law, equity, or statute. [2017 c 228 § 11; 2015 2nd sp.s. c 5 § 10; 2013 2nd sp.s. c 17 § 17.]

***Reviser's note:** RCW 74.60.050 was amended by 2019 c 318 § 5, changing subsection (2) to subsection (3).

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.170 Estimated hospital net financial benefit determined by the authority—Formula—Modification. *(Expires July 1, 2023.)* (1) The estimated hospital net financial benefit under this chapter shall be determined by the authority by summing the following anticipated hospital payments, including all applicable federal matching funds, specified in RCW 74.60.090 for grants to certified public expenditure hospitals, RCW 74.60.100 for payments to critical access hospitals, RCW 74.60.110 for payments to small rural disproportionate share hospitals, RCW 74.60.120 for direct supplemental payments to hospitals, RCW 74.60.130 for managed care capitation payments, RCW 74.60.020(4)(f) for quality improvement incentives, minus the total assessments paid by all hospitals under RCW 74.60.030 for hospital assessments, and minus any taxes paid on RCW 74.60.130 for managed care payments.

(2) If, for any reason including reduction or elimination of federal matching funds, the estimated hospital net financial benefit falls below one hundred thirty million dollars in any state fiscal year, the office of financial management shall direct the authority to modify the assessment rates provided for in RCW 74.60.030, and the office of financial management is authorized to direct the authority to adjust the amounts disbursed from the fund, including disbursements for payments under RCW 74.60.020(4)(f) and payments to hospitals under RCW 74.60.090 through 74.60.130 and 74.60.020(4)(g), such that the estimated hospital net financial benefit is equal to the amount disbursed from the fund for use in lieu of state general fund payments. Each category of adjusted payments to hospitals under RCW 74.60.090 through 74.60.130 and payments under RCW 74.60.020(4)(g) must bear the same relationship to the total of such adjusted payments as originally provided in this chapter. [2017 c 228 § 14.]

Effective date—2017 c 228: See note following RCW 74.60.005.

74.60.900 Severability—2010 1st sp.s. c 30. *(Expires July 1, 2023.)* (1) The provisions of this chapter are not severable: If the conditions in RCW 74.60.150(1) are not satisfied or if any of the circumstances in RCW 74.60.150(2) should occur, this entire chapter shall have no effect from that point forward.

(2) In the event that any portion of this chapter shall have been validly implemented and the entire chapter is later rendered ineffective under this section, prior assessments and payments under the validly implemented portions shall not be affected. [2013 2nd sp.s. c 17 § 16; 2010 1st sp.s. c 30 § 18.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.901 Expiration date—2010 1st sp.s. c 30. This chapter expires July 1, 2023. [2019 c 318 § 8; 2017 c 228 § 12; 2015 2nd sp.s. c 5 § 11; 2013 2nd sp.s. c 17 § 19; 2010 1st sp.s. c 30 § 21.]

Effective date—2019 c 318: See note following RCW 74.60.005.

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.902 Expiration of chapter—2010 1st sp.s. c 30. Upon expiration of chapter 74.60 RCW, inpatient and outpatient hospital reimbursement rates shall return to a funding level as if the four percent medicaid inpatient and outpatient rate reductions did not occur on July 1, 2009, using the rate structure in effect July 1, 2015, or as otherwise specified in the 2019-2021 biennial operating appropriations act. [2017 c 228 § 13; 2010 1st sp.s. c 30 § 22.]

Effective date—2017 c 228: See note following RCW 74.60.005.

74.60.903 Effective date—2010 1st sp.s. 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 27, 2010]. [2010 1st sp.s. c 30 § 23.]

Chapter 74.62 RCW
AGED, BLIND, OR DISABLED ASSISTANCE PROGRAM—PREGNANT WOMEN ASSISTANCE PROGRAM—ESSENTIAL NEEDS AND HOUSING SUPPORT PROGRAM

Sections

74.62.005 Findings—Intent—2011 1st sp.s. c 36. (1) The legislature finds that:

(a) Persons who have a long-term disability and apply for federal supplemental security income benefits should receive assistance while their application for federal benefits is pending, with repayment from the federal government of state-funded income assistance paid through the aged, blind, or disabled assistance program;

(b) Persons who are incapacitated from gainful employment for an extended period, but who may not meet the level of severity of a long-term disability, are at increased risk of homelessness; and

(c) Persons who are homeless and suffering from significant medical impairments, mental illness, or chemical dependency face substantial barriers to successful participation in, and completion of, needed medical or behavioral health treatment services. Stable housing increases the likelihood of compliance with and completion of treatment.

(2) Through chapter 36, Laws of 2011 1st sp. sess., the legislature intends to:

(a) Terminate all components of the disability lifeline program created in 2010 and codified in *RCW 74.04.005 and create new programs: (i) To provide financial grants through the aged, blind, and [or] disabled assistance program and the pregnant women assistance program; and (ii) to provide services through the essential needs and housing support program; and

(b) Increase opportunities to utilize limited public funding, combined with private charitable and volunteer efforts to serve persons who are recipients of the benefits provided by the new programs created under chapter 36, Laws of 2011 1st sp. sess. [2011 1st sp.s. c 36 § 1.]

***Reviser's note:** 2011 1st sp.s. c 36 § 8 deleted the definition of "disability lifeline program."

Effective date—2011 1st sp.s. c 36: "Except for sections 6 and 8 of this act, 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 [June 15, 2011]." [2011 1st sp.s. c 36 § 38.]

74.62.010 Definitions. For the purposes of this chapter, unless the context indicates otherwise, the following definitions shall apply:

(1) "Aged, blind, and [or] disabled assistance program" means the program established under RCW 74.62.030.

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

(3) "Director" or "secretary" means the secretary of social and health services.

(4) "Essential needs and housing support program" means the program established under RCW 43.185C.220.

(5) "Essential needs support" means personal health and hygiene items, cleaning supplies, other necessary items and transportation passes or tokens provided through an essential needs support entity established under RCW 43.185C.220.

(6) "Housing support" means assistance provided by a designated housing support entity established under RCW 43.185C.220 to maintain existing housing when the client is at substantial risk of becoming homeless, to obtain housing, or to obtain heat, electricity, natural gas, sewer, garbage, and water services when the client is at substantial risk of losing these services.

(7) "Pregnant women assistance program" means the program established under RCW 74.62.030.

(8) In the construction of words and phrases used in this chapter, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders, and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary. [2011 1st sp.s. c 36 § 7.]

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

74.62.020 Termination of disability lifeline program. Effective October 31, 2011, the disability lifeline program, as defined under chapter 74.04 RCW, is terminated and all benefits provided under that program shall expire and cease to exist. [2011 1st sp.s. c 36 § 2.]

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

74.62.030 Assistance programs—Eligibility criteria. (1)(a) The aged, blind, or disabled assistance program shall provide financial grants to persons in need who:

(i) Are not eligible to receive federal aid assistance, other than basic food benefits transferred electronically and medical assistance;

(ii) Meet the eligibility requirements of subsection (3) of this section; and

(iii) Are aged, blind, or disabled. For purposes of determining eligibility for assistance for the aged, blind, or disabled assistance program, the following definitions apply:

(A) "Aged" means age sixty-five or older.

(B) "Blind" means statutorily blind as defined for the purpose of determining eligibility for the federal supplemental security income program.

(C) "Disabled" means likely to meet the federal supplemental security income disability standard. In making this determination, the department should give full consideration to the cumulative impact of an applicant's multiple impairments, an applicant's age, and vocational and educational history.

In determining whether a person is disabled, the department may rely on, but is not limited to, the following:

(I) A previous disability determination by the social security administration or the disability determination service entity within the department; or

(II) A determination that an individual is eligible to receive optional categorically needy medicaid as a disabled person under the federal regulations at 42 C.F.R. Parts 435, Secs. 201(a)(3) and 210.

(b) The following persons are not eligible for the aged, blind, or disabled assistance program:

(i) Persons who are not able to engage in gainful employment due primarily to alcohol or drug addiction. These persons shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. This subsection may not be construed to prohibit the department from granting aged, blind, or disabled assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the aged, blind, or disabled assistance program; or

(ii) Persons for whom there has been a final determination of ineligibility for federal supplemental security income benefits.

(c) Persons may receive aged, blind, or disabled assistance benefits and essential needs and housing program support under RCW 43.185C.220 concurrently while pending application for federal supplemental security income benefits. The monetary value of any aged, blind, or disabled assistance benefit that is subsequently duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.

(2) The pregnant women assistance program shall provide financial grants to persons who:

(a) Are not eligible to receive federal aid assistance other than basic food benefits or medical assistance; and

(b) Are pregnant and in need, based upon the current income and resource standards of the federal temporary assistance for needy families program, but are ineligible for federal temporary assistance for needy families benefits for a reason other than failure to cooperate in program requirements; and

(c) Meet the eligibility requirements of subsection (3) of this section.

(3) To be eligible for the aged, blind, or disabled assistance program under subsection (1) of this section or the pregnant women assistance program under subsection (2) of this section, a person must:

(a) Be a citizen or alien lawfully admitted for permanent residence or otherwise residing in the United States under color of law;

(b) Meet the income and resource standards described in RCW 74.04.805(1) (d) and (e);

(c) Have furnished the department his or her social security number. If the social security number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of benefits, and the social security number shall be provided to the department upon receipt;

(d) Not have refused or failed without good cause to participate in drug or alcohol treatment if an assessment by a certified chemical dependency counselor indicates a need for such treatment. Good cause must be found to exist when a person's physical or mental condition, as determined by the department, prevents the person from participating in drug or alcohol dependency treatment, when needed outpatient drug or alcohol treatment is not available to the person in the county of his or her residence or when needed inpatient treatment is not available in a location that is reasonably accessible for the person; and

(e) Not have refused or failed to cooperate in obtaining federal aid assistance, without good cause.

(4) Referrals for essential needs and housing support under RCW 43.185C.220 shall be provided to persons found eligible under RCW 74.04.805.

(5) No person may be considered an eligible individual for benefits under this section with respect to any month if during that month the person:

(a) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or

(b) Is violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

(6) The department must share client data for individuals eligible for essential needs and housing support with the department of commerce and designated essential needs and housing support entities as required under RCW 43.185C.230. [2018 c 48 § 2; 2013 2nd sp.s. c 10 § 2; 2013 2nd sp.s. c 10 § 1; 2011 1st sp.s. c 36 § 3.]

Effective date—2018 c 48 §§ 1 and 2: See note following RCW 74.04.805.

Effective date—2014 c 218; 2013 2nd sp.s. c 10 § 2: "Section 2 of this act takes effect July 1, 2014." [2014 c 218 § 1; 2013 2nd sp.s. c 10 § 10.]

Effective date—2013 2nd sp.s. c 10: "Except for section 2 of this act, this act takes effect January 1, 2014." [2013 2nd sp.s. c 10 § 9.]

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Chapter 74.64 RCW
MEDICAL SERVICES PROGRAM—WASTE, FRAUD, ABUSE DETECTION, PREVENTION, AND RECOVERY SOLUTIONS

Sections

74.64.005 Intent. It is the intent of the legislature to:

(1) Implement waste, fraud, and abuse detection, prevention, and recovery solutions to improve program integrity for medical services programs in the state and create efficiency and cost savings through a shift from a retrospective "pay and chase" model to a prospective prepayment model; and

(2) Invest in the most cost-effective technologies or strategies that yield the highest return on investment. [2012 c 234 § 1.]

74.64.010 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) "Enrollee" means an individual who receives benefits through a medical services program.

(3) "Medical services programs" means those medical programs established under chapter 74.09 RCW or other applicable law, including medical assistance, the limited casualty program, children's health program, medical care services, and state children's health insurance program. [2018 c 201 § 7022; 2012 c 234 § 2.]

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

74.64.020 Contracting for services. (1) Not later than September 1, 2012, the authority shall issue a request for information to seek input from potential contractors on capabilities that the authority does not currently possess, functions that the authority is not currently performing, and the cost structures associated with implementing:

(a) Advanced predictive modeling and analytics technologies to provide a comprehensive and accurate view across all providers, enrollees, and geographic locations within the medical services programs in order to:

(i) Identify and analyze those billing or utilization patterns that represent a high risk of fraudulent activity;

(ii) Be integrated into the existing medical services programs claims operations;

(iii) Undertake and automate such analysis before payment is made to minimize disruptions to agency operations and speed claim resolution;

(iv) Prioritize such identified transactions for additional review before payment is made based on the likelihood of potential waste, fraud, or abuse;

(v) Obtain outcome information from adjudicated claims to allow for refinement and enhancement of the predictive analytics technologies based on historical data and algorithms with the system;

(vi) Prevent the payment of claims for reimbursement that have been identified as potentially wasteful, fraudulent, or abusive until the claims have been automatically verified as valid;

(b) Provider and enrollee data verification and screening technology solutions, which may use publicly available records, for the purposes of automating reviews and identifying and preventing inappropriate payments by:

(i) Identifying associations between providers, practitioners, and beneficiaries which indicate rings of collusive fraudulent activity; and

(ii) Discovering enrollee attributes which indicate improper eligibility, including, but not limited to, death, out-of-state residence, inappropriate asset ownership, or incarceration; and

(c) Fraud investigation services that combine retrospective claims analysis and prospective waste, fraud, or abuse detection techniques. These services must include analysis of historical claims data, medical records, suspect provider databases, and high-risk identification lists, as well as direct enrollee and provider interviews. Emphasis must be placed on providing education to providers and allowing them the opportunity to review and correct any problems identified prior to adjudication.

(2) The authority is encouraged to use the results of the request for information to create a formal request for proposals to carry out the work identified in this section if the following conditions are met:

(a) The authority expects to generate state savings by preventing fraud, waste, and abuse;

(b) This work can be integrated into the authority's current medical services claims operations without creating additional costs to the state;

(c) The reviews or audits are not anticipated to delay or improperly deny the payment of legitimate claims to providers. [2012 c 234 § 3.]

74.64.030 Funding for chapter—Reimbursement methods. It is the intent of the legislature that the savings achieved through this chapter shall more than cover the cost of implementation and administration. Therefore, to the extent possible, technology services used in carrying out this chapter must be secured using the savings generated by the program, whereby the state's only direct cost will be funded through the actual savings achieved. Further, to enable this model, reimbursement to the contractor may be contracted on the basis of a percentage of achieved savings model, a per beneficiary per month model, a per transaction model, a case-rate model, or any blended model of the aforementioned methodologies. Reimbursement models with the contractor may include performance guarantees of the contractor to ensure savings identified exceeds [exceed] program costs. [2012 c 234 § 4.]

74.64.900 Effective date—2012 c 234. This act takes effect July 1, 2012. [2012 c 234 § 7.]

Chapter 74.66 RCW
MEDICAID FRAUD FALSE CLAIMS ACT

Sections

Reviser's note—Sunset Act application: The medicaid fraud false claims act is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.419. RCW 74.66.050 through 74.66.080 and 74.66.130 are scheduled for future repeal under RCW 43.131.420.

74.66.005 Short title. This chapter may be known and cited as the medicaid fraud false claims act. [2012 c 241 § 214.]

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.66.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1)(a) "Claim" means any request or demand made for a medicaid payment under chapter 74.09 RCW or other applicable law, whether under a contract or otherwise, for money or property and whether or not a government entity has title to the money or property, that:

(i) Is presented to an officer, employee, or agent of a government entity; or

(ii) Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the government entity's behalf or to advance a government entity program or interest, and the government entity:

(A) Provides or has provided any portion of the money or property requested or demanded; or

(B) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(b) A "claim" does not include requests or demands for money or property that the government entity has paid to an individual as compensation for employment or as an income subsidy with no restrictions on that individual's use of the money or property.

(2) "Custodian" means the custodian, or any deputy custodian, designated by the attorney general.

(3) "Documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret the data compilations, and any product of discovery.

(4) "False claims act investigation" means any inquiry conducted by any false claims act investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this chapter.

(5) "False claims act investigator" means any attorney or investigator employed by the state attorney general who is charged with the duty of enforcing or carrying into effect any provision of this chapter, or any officer or employee of the state of Washington acting under the direction and supervision of the attorney or investigator in connection with an investigation pursuant to this chapter.

(6) "Government entity" means all Washington state agencies that administer medicaid-funded programs under this title.

(7)(a) "Knowing" and "knowingly" mean that a person, with respect to information:

(i) Has actual knowledge of the information;

(ii) Acts in deliberate ignorance of the truth or falsity of the information; or

(iii) Acts in reckless disregard of the truth or falsity of the information.

(b) "Knowing" and "knowingly" do not require proof of specific intent to defraud.

(8) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(9) "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or rule, or from the retention of any overpayment.

(10) "Official use" means any use that is consistent with the law, and the rules and policies of the attorney general, including use in connection with: Internal attorney general memoranda and reports; communications between the attorney general and a federal, state, or local government agency, or a contractor of a federal, state, or local government agency, undertaken in furtherance of an investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda, and briefs submitted to a court or other tribunal; and communications with attorney general investigators, auditors, consultants and experts, the counsel of other parties, and arbitrators or mediators, concerning an investigation, case, or proceeding.

(11) "Person" means any natural person, partnership, corporation, association, or other legal entity, including any local or political subdivision of a state.

(12) "Product of discovery" includes:

(a) The original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(b) Any digest, analysis, selection, compilation, or derivation of any item listed in (a) of this subsection; and

(c) Any index or other manner of access to any item listed in (a) of this subsection.

(13) "Qui tam action" is an action brought by a person under RCW 74.66.050.

(14) "Qui tam relator" or "relator" is a person who brings an action under RCW 74.66.050. [2018 c 201 § 7023; 2012 c 241 § 201.]

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

Intent—Finding—2012 c 241: "The legislature intends to enact a state false claims act in order to provide this state with another tool to combat medicaid fraud. The legislature finds that between 1996 and 2009 state-initiated false claims acts resulted in over five billion dollars in total recoveries to those states. The highest recoveries in those cases were from claims relating to billing fraud, off-label marketing, and withholding safety information; these cases were primarily related to the pharmaceuticals industry and hospital networks, hospitals, and medical centers. By chapter 241, Laws of 2012, the legislature does not intend to target a certain industry, profession, or retailer of medical equipment, or to place an undue burden on health care professionals. Chapter 241, Laws of 2012 is not intended to harass health care professionals, nor is intended to be used as a tool to target actions that are related to incidental errors or clerical errors, which should not be considered fraud. The intent is to use the false claims act to root out significant areas of fraud that result in higher health care costs to this state and to use the false claims act to recover state money that could and should be used to support the medicaid program." [2012 c 241 § 101.]

74.66.020 Civil penalty—False or fraudulent claims. (1) Subject to subsections (2) and (4) of this section, a person is liable to the government entity for a civil penalty of not less than the greater of ten thousand nine hundred fifty-seven dollars or the minimum inflation adjusted penalty amount imposed as provided by 31 U.S.C. Sec. 3729(a) and not more than the greater of twenty-one thousand nine hundred sixteen dollars or the maximum inflation adjusted penalty amount imposed as provided by 31 U.S.C. Sec. 3729(a), plus three times the amount of damages which the government entity sustains because of the act of that person, if the person:

(a) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(c) Conspires to commit one or more of the violations in this subsection (1);

(d) Has possession, custody, or control of property or money used, or to be used, by the government entity and knowingly delivers, or causes to be delivered, less than all of that money or property;

(e) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the government entity and, intending to defraud the government entity, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(f) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the government entity who lawfully may not sell or pledge property; or

(g) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the government entity, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government entity.

(2) The court may assess not less than two times the amount of damages which the government entity sustains because of the act of a person, if the court finds that:

(a) The person committing the violation of subsection (1) of this section furnished the Washington state attorney general with all information known to him or her about the violation within thirty days after the date on which he or she first obtained the information;

(b) The person fully cooperated with any investigation by the attorney general of the violation; and

(c) At the time the person furnished the attorney general with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(3) A person violating this section is liable to the attorney general for the costs of a civil action brought to recover any such penalty or damages.

(4) For the purposes of determining whether an insurer has a duty to provide a defense or indemnification for an insured and if coverage may be denied if the terms of the policy exclude coverage for intentional acts, a violation of subsection (1) of this section is an intentional act. [2018 c 63 § 2; 2012 c 241 § 202.]

Intent—2018 c 63: "It is the intent of the legislature through this act to strongly deter medicaid provider fraud and ensure maximum recoveries for the state in actions under chapter 74.66 RCW, the state medicaid fraud false claims act. Specifically, it is the policy of the state to maintain compliance with the federal deficit reduction act, codified as section 1909 of the federal social security act (42 U.S.C. Sec. 1396h), and thereby obtain the additional ten percent share of state medicaid fraud false claims act recoveries afforded by the federal deficit reduction act for compliant states, while encouraging qui tam whistleblower complaints to at least the same extent as the federal false claims act (31 U.S.C. Sec. 3729 et seq.)." [2018 c 63 § 1.]

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.66.030 Public records exemption. Any information furnished pursuant to this chapter is exempt from disclosure under the public records act, chapter 42.56 RCW, until final disposition and all court-ordered seals are lifted. [2012 c 241 § 203.]

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.66.040 Attorney general—Investigation—Civil action. The attorney general must diligently investigate a violation under RCW 74.66.020. If the attorney general finds that a person has violated or is violating RCW 74.66.020, the attorney general may bring a civil action under this section against the person. [2012 c 241 § 204.]

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.66.050 Qui tam action—Relator rights and duties. (1) A person may bring a civil action for a violation of RCW 74.66.020 for the person and for the government entity. The action may be known as a qui tam action and the person bringing the action as a qui tam relator. The action must be brought in the name of the government entity. The action may be dismissed only if the court, and the attorney general give written consent to the dismissal and their reason for consenting.

(2) A relator filing an action under this chapter must serve a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses on the attorney general in electronic format. The

relator must file the complaint in camera. The complaint must remain under seal for at least sixty days, and may not be served on the defendant until the court so orders. The attorney general may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

(3) The attorney general may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subsection (2) of this section. The motions may be supported by affidavits or other submissions in camera. The defendant may not be required to respond to any complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant.

(4) If the attorney general does not proceed with the action prior to the expiration of the sixty-day period or any extensions obtained under subsection (3) of this section, then the relator has the right to conduct the action.

(5) When a person brings an action under this section, no person other than the attorney general may intervene or bring a related action based on the facts underlying the pending action. [2012 c 241 § 205.]

Sunset Act application: See note following chapter digest.

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.66.060 Qui tam action—Attorney general authority. (1) If the attorney general proceeds with the qui tam action, the attorney general shall have the primary responsibility for prosecuting the action, and is not bound by an act of the relator. The relator has the right to continue as a party to the action, subject to the limitations set forth in subsection (2) of this section.

(2)(a) The attorney general may move to dismiss the qui tam action notwithstanding the objections of the relator if the relator has been notified by the attorney general of the filing of the motion and the court has provided the relator with an opportunity for a hearing on the motion.

(b) The attorney general may settle the action with the defendant notwithstanding the objections of the relator if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

(c) Upon a showing by the attorney general that unrestricted participation during the course of the litigation by the relator would interfere with or unduly delay the attorney general's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the relator's participation, such as:

(i) Limiting the number of witnesses the relator may call;

(ii) Limiting the length of the testimony of the witnesses;

(iii) Limiting the relator's cross-examination of witnesses; or

(iv) Otherwise limiting the participation by the relator in the litigation.

(d) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the relator would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the relator in the litigation.

(3) If the attorney general elects not to proceed with the qui tam action, the relator has the right to conduct the action. If the attorney general so requests, the relator must serve on the attorney general copies of all pleadings filed in the action and shall supply copies of all deposition transcripts, at the attorney general's expense. When the relator proceeds with the action, the court, without limiting the status and rights of the relator, may nevertheless permit the attorney general to intervene at a later date upon a showing of good cause.

(4) Whether or not the attorney general proceeds with the qui tam action, upon a showing by the attorney general that certain actions of discovery by the relator would interfere with the attorney general's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. The showing must be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the attorney general has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding RCW 74.66.050, the attorney general may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil money penalty. If any alternate remedy is pursued in another proceeding, the relator has the same rights in the proceeding as the relator would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the state of Washington, if all time for filing the appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review. [2012 c 241 § 206.]

Sunset Act application: See note following chapter digest.

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.66.070 Qui tam action—Award—Proceeds of action or settlement of claim. (1)(a) Subject to (b) of this subsection, if the attorney general proceeds with a qui tam action, the relator must receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the relator substantially contributed to the prosecution of the action.

(b) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the relator, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award an amount it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the relator in advancing the case to litigation.

(c) Any payment to a relator under (a) or (b) of this subsection must be made from the proceeds. The relator must also receive an amount for reasonable expenses which the

court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(2) If the attorney general does not proceed with a qui tam action, the relator shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount may not be less than twenty-five percent and not more than thirty percent of the proceeds of the action or settlement and must be paid out of the proceeds. The relator must also receive an amount for reasonable expenses, which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(3) Whether or not the attorney general proceeds with the qui tam action, if the court finds that the action was brought by a person who planned and initiated the violation of RCW 74.66.020 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under subsection (1) or (2) of this section, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of RCW 74.66.020, that person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal may not prejudice the right of the state to continue the action, represented by the attorney general.

(4) If the attorney general does not proceed with the qui tam action and the relator conducts the action, the court may award to the defendant reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the relator was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(5) Any funds recovered that remain after calculation and distribution under subsections (1) through (3) of this section must be deposited into the medicaid fraud penalty account established in RCW 74.09.215. [2012 c 241 § 207.]

Sunset Act application: See note following chapter digest.

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.66.080 Qui tam action—Restrictions—Dismissal. (1) In no event may a person bring a qui tam action which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party.

(2)(a) The court must dismiss an action or claim under this section, unless opposed by the attorney general, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

(i) In a state criminal, civil, or administrative hearing in which the attorney general or other governmental [government] entity is a party;

(ii) In a legislative report, or other state report, hearing, audit, or investigation; or

(iii) By the news media;

unless the action is brought by the attorney general or the relator is an original source of the information.

(b) For purposes of this section, "original source" means an individual who either (i) prior to a public disclosure under (a) of this subsection, has voluntarily disclosed to the attorney general the information on which allegations or transactions in a claim are based, or (ii) has knowledge that is independent of, and materially adds to, the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the attorney general before filing an action under this section. [2012 c 241 § 208.]

Sunset Act application: See note following chapter digest.

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.66.090 Whistleblower relief. (1) Any employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent, is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under this chapter or other efforts to stop one or more violations of this chapter.

(2) Relief under subsection (1) of this section must include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees, and any and all relief available under RCW 49.60.030(2). An action under this subsection may be brought in the appropriate superior court of the state of Washington for the relief provided in this subsection.

(3) A civil action under this section may not be brought more than three years after the date when the retaliation occurred. [2012 c 241 § 209.]

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.66.100 Procedure for civil actions. (1) A subpoena requiring the attendance of a witness at a trial or hearing conducted under RCW 74.66.040 or 74.66.050 may be served at any place in the state of Washington.

(2) A civil action under RCW 74.66.040 or 74.66.050 may be brought at any time, without limitation after the date on which the violation of RCW 74.66.020 is committed.

(3) If the attorney general elects to intervene and proceed with a qui tam action, the attorney general may file its own complaint or amend the complaint of a relator to clarify or add detail to the claims in which the attorney general is intervening and to add any additional claims with respect to which the attorney general contends it is entitled to relief.

(4) In any action brought under RCW 74.66.040 or 74.66.050, the attorney general is required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(5) Notwithstanding any other provision of law or the rules for superior court, a final judgment rendered in favor of the government entity in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, estops the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal

proceeding and which is brought under RCW 74.66.040 or 74.66.050. [2012 c 241 § 210.]

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.66.110 Jurisdiction—Seal on action. (1) Any action under RCW 74.66.040 or 74.66.050 may be brought in the superior court in any county in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by RCW 74.66.020 occurred. The appropriate court must issue a summons as required by the superior court civil rules and service must occur at any place within the state of Washington.

(2) The superior courts have jurisdiction over any action brought under the laws of any city or county for the recovery of funds paid by a government entity if the action arises from the same transaction or occurrence as an action brought under RCW 74.66.040 or 74.66.050.

(3) With respect to any local government that is named as a coplaintiff with the state in an action brought under RCW 74.66.050, a seal on the action ordered by the court under RCW 74.66.050 does not preclude the attorney general or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of the local government to investigate and prosecute the action on behalf of the local government, except that the seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action. [2012 c 241 § 211.]

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.66.120 Civil investigative demands. (1)(a) Whenever the attorney general, or a designee, for purposes of this section, has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims act investigation, the attorney general, or a designee, may, before commencing a civil proceeding under RCW 74.66.040 or making an election under RCW 74.66.050, issue in writing and serve upon the person, a civil investigative demand requiring the person:

(i) To produce the documentary material for inspection and copying;

(ii) To answer in writing written interrogatories with respect to the documentary material or information;

(iii) To give oral testimony concerning the documentary material or information; or

(iv) To furnish any combination of such material, answers, or testimony.

(b) The attorney general may delegate the authority to issue civil investigative demands under this subsection (1). Whenever a civil investigative demand is an express demand for any product of discovery, the attorney general, the deputy attorney general, or an assistant attorney general must serve, in any manner authorized by this section, a copy of the demand upon the person from whom the discovery was obtained and must notify the person to whom the demand is issued of the date on which the copy was served. Any information obtained by the attorney general or a designee of the attorney general under this section may be shared with any qui tam relator if the attorney general or designee determines it is necessary as part of any false claims act investigation.

(2)(a) Each civil investigative demand issued under subsection (1) of this section must state the nature of the conduct constituting the alleged violation of this chapter which is under investigation, and the applicable provision of law alleged to be violated.

(b) If the demand is for the production of documentary material, the demand must:

(i) Describe each class of documentary material to be produced with such definiteness and certainty as to permit the material to be fairly identified;

(ii) Prescribe a return date for each class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(iii) Identify the false claims act investigator to whom such material must be made available.

(c) If the demand is for answers to written interrogatories, the demand must:

(i) Set forth with specificity the written interrogatories to be answered;

(ii) Prescribe dates at which time answers to written interrogatories must be submitted; and

(iii) Identify the false claims law investigator to whom such answers must be submitted.

(d) If the demand is for the giving of oral testimony, the demand must:

(i) Prescribe a date, time, and place at which oral testimony must be commenced;

(ii) Identify a false claims act investigator who must conduct the examination and the custodian to whom the transcript of the examination must be submitted;

(iii) Specify that the attendance and testimony are necessary to the conduct of the investigation;

(iv) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(v) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(e) Any civil investigative demand issued under this section which is an express demand for any product of discovery is not due until thirty days after a copy of the demand has been served upon the person from whom the discovery was obtained.

(f) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section may not be sooner than six days after the date on which demand is received, unless the attorney general or an assistant attorney general designated by the attorney general determines that exceptional circumstances are present which warrant the commencement of the testimony sooner.

(g) The attorney general may not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the attorney general, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(3) A civil investigative demand issued under subsection (1) or (2) of this section may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if the material, answers, or testimony would be protected from disclosure under:

(a) The standards applicable to subpoenas or subpoenas duces tecum issued by a court to aid in a special inquiry investigation; or

(b) The standards applicable to discovery requests under the superior court civil rules, to the extent that the application of these standards to any demand is appropriate and consistent with the provisions and purposes of this section.

(4) Any demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law, other than this section, preventing or restraining disclosure of the product of discovery to any person. Disclosure of any product of discovery pursuant to any express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(5) Any civil investigative demand issued under this section may be served by a false claims act investigator, or by a commissioned law enforcement official, at any place within the state of Washington.

(6) Service of any civil investigative demand issued under (a) of this subsection or of any petition filed under subsection (25) of this section may be made upon a partnership, corporation, association, or other legal entity by:

(a) Delivering an executed copy of the demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(b) Delivering an executed copy of the demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(c) Depositing an executed copy of the demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(7) Service of any demand or petition may be made upon any natural person by:

(a) Delivering an executed copy of the demand or petition to the person; or

(b) Depositing an executed copy of the demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(8) A verified return by the individual serving any civil investigative demand issued under subsection (1) or (2) of this section or any petition filed under subsection (25) of this section setting forth the manner of the service constitutes proof of the service. In the case of service by registered or certified mail, the return must be accompanied by the return post office receipt of delivery of the demand.

(9)(a) The production of documentary material in response to a civil investigative demand served under this section must be made under a sworn certificate, in the form as the demand designates, by:

(i) In the case of a natural person, the person to whom the demand is directed; or

(ii) In the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person.

(b) The certificate must state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims act investigator identified in the demand.

(10) Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims act investigator identified in the demand at the principal place of business of the person, or at another place as the false claims act investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (25) of this section. The material must be made available on the return date specified in the demand, or on a later date as the false claims act investigator may prescribe in writing. The person may, upon written agreement between the person and the false claims act investigator, substitute copies for originals of all or any part of the material.

(11)(a) Each interrogatory in a civil investigative demand served under this section must be answered separately and fully in writing under oath and must be submitted under a sworn certificate, in the form as the demand designates, by:

(i) In the case of a natural person, the person to whom the demand is directed; or

(ii) In the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

(b) If any interrogatory is objected to, the reasons for the objection must be stated in the certificate instead of an answer. The certificate must state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information must be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(12) The examination of any person pursuant to a civil investigative demand for oral testimony served under this section must be taken before an officer authorized to administer oaths and affirmations by the laws of the state of Washington or of the place where the examination is held. The officer before whom the testimony is to be taken must put the witness on oath or affirmation and must, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony must be recorded and must be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection does not preclude the taking of testimony by any means

authorized by, and in a manner consistent with, the superior court civil rules.

(13) The false claims act investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney general, any person who may be agreed upon by the attorney for the government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking the testimony.

(14) The oral testimony of any person taken pursuant to a civil investigative demand served under this section must be taken in the county within which such person resides, is found, or transacts business, or in another place as may be agreed upon by the false claims act investigator conducting the examination and the person.

(15) When the testimony is fully transcribed, the false claims act investigator or the officer before whom the testimony is taken must afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless the examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make must be entered and identified upon the transcript by the officer or the false claims act investigator, with a statement of the reasons given by the witness for making the changes. The transcript must then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days after being afforded a reasonable opportunity to examine it, the officer or the false claims act investigator must sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons given.

(16) The officer before whom the testimony is taken must certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims act investigator must promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(17) Upon payment of reasonable charges therefor, the false claims act investigator must furnish a copy of the transcript to the witness only, except that the attorney general, the deputy attorney general, or an assistant attorney general may, for good cause, limit the witness to inspection of the official transcript of the witness' testimony.

(18)(a) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (1) or (2) of this section may be accompanied, represented, and advised by counsel. Counsel may advise the person, in confidence, with respect to any question asked of the person. The person or counsel may object on the record to any question, in whole or in part, and must briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that the person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. The person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If the person refuses to answer any question, a special injury proceeding petition may be filed in the superior court under subsection (25) of this section for an order compelling the person to answer the question.

(b) If the person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of the person may be compelled in accordance with the provisions of the superior court civil rules.

(19) Any person appearing for oral testimony under a civil investigative demand issued under subsection (1) or (2) of this section is entitled to the same fees and allowances which are paid to witnesses in the superior courts.

(20) The attorney general must designate a false claims act investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and must designate such additional false claims act investigators as the attorney general determines from time to time to be necessary to serve as deputies to the custodian.

(21)(a) A false claims act investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section must transmit them to the custodian. The custodian shall take physical possession of the material, answers, or transcripts and is responsible for the use made of them and for the return of documentary material under subsection (23) of this section.

(b) The custodian may cause the preparation of the copies of the documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims act investigator, or employee of the attorney general. The material, answers, and transcripts may be used by any authorized false claims act investigator or other officer or employee in connection with the taking of oral testimony under this section.

(c)(i) Except as otherwise provided in this subsection (21), no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, may be available for examination by any individual other than a false claims act investigator or other officer or employee of the attorney general authorized under (b) of this subsection.

(ii) The prohibition in (c)(i) of this subsection on the availability of material, answers, or transcripts does not apply if consent is given by the person who produced the material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for the material, consent is given by the person from whom the discovery was obtained. Nothing in this subsection [(21)](c)(ii) is intended to prevent disclosure to the legislature, including any committee or subcommittee for use by such an agency in furtherance of its statutory responsibilities.

(d) While in the possession of the custodian and under the reasonable terms and conditions as the attorney general shall prescribe:

(i) Documentary material and answers to interrogatories must be available for examination by the person who produced the material or answers, or by a representative of that person authorized by that person to examine the material and answers; and

(ii) Transcripts of oral testimony must be available for examination by the person who produced the testimony, or by a representative of that person authorized by that person to examine the transcripts.

(22) Whenever any official has been designated to appear before any court, special inquiry judge, or state administrative judge in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to the official the material, answers, or transcripts for official use in connection with any case or proceeding as the official determines to be required. Upon the completion of such a case or proceeding, the official must return to the custodian any material, answers, or transcripts so delivered which have not passed into the control of any court, grand jury, or agency through introduction into the record of such a case or proceeding.

(23) If any documentary material has been produced by any person in the course of any false claims act investigation pursuant to a civil investigative demand under this section, and:

(a) Any case or proceeding before the court or special inquiry judge arising out of the investigation, or any proceeding before any administrative judge involving the material, has been completed; or

(b) No case or proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of the investigation:

Then, the custodian shall, upon written request of the person who produced the material, return to the person the material, other than copies furnished to the false claims act investigator under subsection (10) of this section or made for the attorney general under subsection (21)(b) of this section, which has not passed into the control of any court, grand jury, or agency through introduction into the record of the case or proceeding.

(24)(a) In the event of the death, disability, or separation from service of the attorney general of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to civil investigative demand under this section, or in the event of the official relief of the custodian from responsibility for the custody and control of the material, answers, or transcripts, the attorney general must promptly:

(i) Designate another false claims act investigator to serve as custodian of the material, answers, or transcripts; and

(ii) Transmit in writing to the person who produced the material, answers, or testimony notice of the identity and address of the successor so designated.

(b) Any person who is designated to be a successor under this subsection (24) has, with regard to the material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor may not be held responsible for any default or dereliction which occurred before that designation.

(25) Whenever any person fails to comply with any civil investigative demand issued under subsection (1) or (2) of this section, or whenever satisfactory copying or reproduction of any material requested in the demand cannot be done and the person refuses to surrender the material, the attorney general may file, in any superior court of the state of Washington for any county in which the person resides, is found, or transacts business, and serve upon the person a petition for an order of the court for the enforcement of the civil investigative demand.

(26)(a) Any person who has received a civil investigative demand issued under subsection (1) or (2) of this section may file, in the superior court of the state of Washington for the county within which the person resides, is found, or transacts business, and serve upon the false claims act investigator identified in the demand a petition for an order of the court to modify or set aside the demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside the demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which the discovery was obtained is or was last pending. Any petition filed under this subsection (26)(a) must be filed:

(i) Within thirty days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

(ii) Within a longer period as may be prescribed in writing by any false claims act investigator identified in the demand.

(b) The petition must specify each ground upon which the petitioner relies in seeking relief under (a) of this subsection, and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(27)(a) In the case of any civil investigative demand issued under subsection (1) or (2) of this section which is an express demand for any product of discovery, the person from whom the discovery was obtained may file, in the superior court of the state of Washington for the county in which the proceeding in which the discovery was obtained is or was last pending, and serve upon any false claims act investigator identified in the demand and upon the recipient of the demand, a petition for an order of the court to modify or set aside those portions of the demand requiring production of any product of discovery. Any petition under this subsection (27)(a) must be filed:

(i) Within twenty days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

(ii) Within a longer period as may be prescribed in writing by any false claims act investigator identified in the demand.

(b) The petition must specify each ground upon which the petitioner relies in seeking relief under (a) of this subsection, and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of

the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(28) At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (1) or (2) of this section, the person, and in the case of an express demand for any product of discovery, the person from whom the discovery was obtained, may file, in the superior court of the state of Washington for the county within which the office of the custodian is situated, and serve upon the custodian, a petition for an order of the court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(29) Whenever any petition is filed in any superior court of the state of Washington under this section, the court has jurisdiction to hear and determine the matter so presented, and to enter an order or orders as may be required to carry out the provisions of this section. Any final order so entered is subject to appeal under the rules of appellate procedure. Any disobedience of any final order entered under this section by any court must be punished as a contempt of the court.

(30) The superior court civil rules apply to any petition under this section, to the extent that the rules are not inconsistent with the provisions of this section.

(31) Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (1) or (2) of this section are exempt from disclosure under the public records act, chapter 42.56 RCW. [2012 c 241 § 212.]

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.66.130 Reporting. Beginning November 15, 2012, and annually thereafter, the attorney general in consultation with the health care authority must report results of implementing the medicaid fraud false claims act. This report must include:

(1) The number of attorneys assigned to qui tam initiated actions;

(2) The number of cases brought by qui tam actions and indicate how many cases are brought by the attorney general and how many by the qui tam relator without attorney general participation;

(3) The results of any actions brought under subsection (2) of this section, delineated by cases brought by the attorney general and cases brought by the qui tam relator without attorney general participation;

(4) The amount of recoveries attributable to the medicaid false claims; and

(5) Information on the costs, attorneys' fees, and any other expenses incurred by defendants in investigating and defending against qui tam actions, to the extent this information is provided to the attorney general or health care authority. [2012 c 241 § 213.]

Sunset Act application: See note following chapter digest.

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

Chapter 74.67 RCW
MEDICAID FRAUD CONTROL UNIT

Sections

74.67.005 Finding—Intent. The legislature finds that medicaid provider fraud and the abuse and neglect of persons in nursing facilities, adult family homes, and long-term care services present a serious risk of harm to the people of the state of Washington in general and to vulnerable adults in particular. The legislature intends with this chapter to enable the medicaid fraud control unit within the office of the attorney general to achieve its limited but vital mission to detect, deter, and prosecute the specialized areas of medicaid fraud, abuse, and neglect in Washington's medicaid system. This jurisdiction will also facilitate the medicaid fraud control unit's capacity to fulfill its investigative and prosecutorial obligations under the federal grant, 42 U.S.C. Sec. 1396b(q), to ensure that the federal grant funding requirements for Washington's medicaid program are met. Failure to meet these federal program integrity standards could jeopardize the federal funding for Washington's medicaid program. Furthermore, the legislature intends by this chapter that the medicaid fraud control unit will fully coordinate its efforts with county and local prosecutors and law enforcement to maximize effectiveness and promote efficiency. [2018 c 238 § 1.]

74.67.010 Medicaid fraud control unit—Establishment—Authority and criminal jurisdiction—Duties. (1) The attorney general shall establish and maintain within his or her office the medicaid fraud control unit.

(2) The attorney general shall employ and train personnel to achieve the purposes of this chapter, including attorneys, investigators, auditors, clerical support personnel, and other personnel as the attorney general determines necessary.

(3) The medicaid fraud control unit has the authority and criminal jurisdiction to investigate and prosecute medicaid provider fraud, abuse and neglect matters as enumerated in 42 U.S.C. Sec. 1396b(q)(4) where authority is granted by the federal government, and other federal health care program fraud as set forth in 42 U.S.C. Sec. 1396b(q).

(4) The medicaid fraud control unit shall cooperate with federal and local investigators and prosecutors in coordinating local, state, and federal investigations and prosecutions involving fraud in the provision or administration of medical assistance, goods or services pursuant to medicaid, medicaid managed care, abuse and neglect matters as enumerated in 42 U.S.C. Sec. 1396b(q)(4), or medicare where such authority is obtained from the federal government, and provide those federal officers with any information in its possession regarding such an investigation or prosecution.

(5) The medicaid fraud control unit shall protect the privacy of patients and establish procedures to ensure confidentiality for all records, in accordance with state and federal laws, including but not limited to chapter 70.02 RCW and the federal health insurance portability and accountability act.

(6) The attorney general may appoint medicaid fraud control investigators to detect, investigate, and apprehend when it appears that a violation of criminal law relating to

medicaid fraud, medicaid managed care fraud, medicare fraud, or abuse and neglect matters as enumerated in 42 U.S.C. Sec. 1396b(q)(4) has been or is about to be committed and specify the extent and limitations of the investigators' duties and authority in carrying out the limited scope and purposes of this chapter.

(7) The department of social and health services or law enforcement agencies that receive mandatory reports under RCW 74.34.035 may share such reports in a timely manner with the medicaid fraud control unit within the office of the attorney general. [2018 c 238 § 2.]

Chapter 74.98 RCW
CONSTRUCTION

Sections

74.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 26 § 74.98.010.]

74.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 26 § 74.98.020.]

74.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, the application of the provision to other persons or circumstances is not affected. [1959 c 26 § 74.98.030.]

74.98.040 Purpose—1959 c 26. It is the purpose and intent of this title to provide for the public welfare by making available, in conjunction with federal matching funds, such public assistance as is necessary to insure to recipients thereof a reasonable subsistence compatible with decency and health. [1959 c 26 § 74.98.040.]

74.98.050 Repeals and saving. See 1959 c 26 s 74.98.050.

74.98.060 Emergency—1959 c 26. This 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. [1959 c 26 § 74.98.060.]