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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2154

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State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives R. Meyers, Valle, Carlson, Jones, Dellwo, Roland, Campbell, Dorn, Ogden, Kessler, Holm, Wineberry and Thibaudeau)

Read first time 02/08/94. Referred to Committee on .

1 AN ACT Relating to residents of long-term care facilities; amending  
2 RCW 18.20.120; adding a new section to chapter 18.20 RCW; adding a new  
3 section to chapter 18.51 RCW; adding a new section to chapter 72.36  
4 RCW; adding a new section to chapter 70.128 RCW; adding a new chapter  
5 to Title 70 RCW; and creating new sections.

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

7 NEW SECTION. **Sec. 1.** INTENT. The legislature recognizes that  
8 long-term care facilities are a critical part of the state's long-term  
9 care services system. It is the intent of the legislature that  
10 individuals who reside in long-term care facilities receive appropriate  
11 services, be treated with courtesy, and continue to enjoy their basic  
12 civil and legal rights.

13 It is also the intent of the legislature that long-term care  
14 facility residents have the opportunity to exercise reasonable control  
15 over life decisions. The legislature finds that choice, participation,  
16 privacy, and the opportunity to engage in religious, political, civic,  
17 recreational, and other social activities foster a sense of self-worth  
18 and enhance the quality of life for long-term care residents.

1       The legislature finds that the public interest would be best served  
2 by providing the same basic resident rights in all long-term care  
3 settings. Residents in nursing facilities are guaranteed certain  
4 rights by federal law and regulation, 42 U.S.C. 1396r and 42 C.F.R.  
5 part 483. It is the intent of the legislature to extend those basic  
6 rights to residents in veterans' homes, boarding homes, and adult  
7 family homes.

8       NEW SECTION.   **Sec. 2.**   DEFINITIONS. Unless the context clearly  
9 requires otherwise, the definitions in this section apply throughout  
10 this chapter.

11       (1) "Department" means the department of state government  
12 responsible for licensing the provider in question.

13       (2) "Facility" means a long-term care facility.

14       (3) "Long-term care facility" means a facility that is licensed or  
15 required to be licensed under chapter 18.20, 72.36, or 70.128 RCW.

16       (4) "Resident" means the individual receiving services in a long-  
17 term care facility, that resident's attorney in fact, guardian, or  
18 other legal representative acting within the scope of their authority.

19       (5) "Physical restraint" means a manual method, obstacle, or  
20 physical or mechanical device, material, or equipment attached or  
21 adjacent to the resident's body that restricts freedom of movement or  
22 access to his or her body.

23       (6) "Chemical restraint" means a psychopharmacologic drug that is  
24 used for discipline or convenience and not required to treat the  
25 resident's medical symptoms.

26       (7) "Legal representative" means a person appointed by the court,  
27 or otherwise authorized by law, to act on the resident's behalf.

28       NEW SECTION.   **Sec. 3.**   EXERCISE OF RIGHTS. The resident has a  
29 right to a dignified existence, self-determination, and communication  
30 with and access to persons and services inside and outside the  
31 facility. A facility must actively protect and promote the rights of  
32 each resident and actively assist the resident in exercising those  
33 rights, including each of the following rights:

34       (1) The resident has the right to exercise his or her rights as a  
35 resident of the facility and as a citizen or resident of the United  
36 States and the state of Washington.

1 (2) The resident has the right to be free of interference,  
2 coercion, discrimination, and reprisal from the facility in exercising  
3 his or her rights.

4 (3) In the case of a resident adjudged incompetent by a court of  
5 competent jurisdiction, the rights of the resident are exercised by the  
6 person appointed to act on the resident's behalf.

7 (4) In the case of a resident who has not been adjudged incompetent  
8 by the state court, a legal surrogate designated in accordance with RCW  
9 7.70.065 may exercise the resident's rights to the extent provided by  
10 law.

11 NEW SECTION. **Sec. 4.** NOTICE OF RIGHTS AND SERVICES. (1) The  
12 facility must inform the resident both orally and in writing in a  
13 language that the resident understands of his or her rights and all  
14 rules and regulations governing resident conduct and responsibilities  
15 during the stay in the facility. The notification must be made prior  
16 to or upon admission and during the resident's stay. Receipt of the  
17 information, and amendments to it must be acknowledged in writing.  
18 Rules or regulations that unreasonably restrict the rights of a  
19 resident as set forth in this chapter are null and void.

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

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

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

28 (3) The facility must inform each resident in writing before, or at  
29 the time of admission, and periodically during the residents stay, of  
30 services available in the facility and of charges for those services  
31 including charges for services not covered by the facility's per diem  
32 rate or applicable public benefit programs.

33 (4) The facility must furnish a written description of legal rights  
34 that includes:

35 (a) A description of the manner of protecting personal funds, under  
36 section 5 of this act;

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

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

7 (5) Notification of changes.

8 (a) A facility must immediately inform the resident; consult with  
9 the resident's physician; and if known, notify the resident's legal  
10 representative or an interested family member when there is:

11 (i) An accident involving the resident which results in injury and  
12 has the potential for requiring physician intervention;

13 (ii) A significant change in the resident's physical, mental, or  
14 psychosocial status (i.e., a deterioration in health, mental, or  
15 psychosocial status in either life-threatening conditions or clinical  
16 complications).

17 (b) The facility must also promptly notify the resident and, if  
18 known, the resident's legal representative or interested family member  
19 when there is:

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

21 (ii) A decision to transfer or discharge the resident from the  
22 facility.

23 (c) The facility must record and periodically update the address  
24 and phone number of the resident's legal representative or interested  
25 family member.

26 NEW SECTION. **Sec. 5.** PROTECTION OF RESIDENT'S FUNDS. (1) The  
27 resident has the right to manage his or her financial affairs, and the  
28 facility may not require residents to deposit their personal funds with  
29 the facility.

30 (2) Upon written authorization of a resident, if the facility  
31 agrees to manage the resident's personal funds, the facility must hold,  
32 safeguard, manage, and account for the personal funds of the resident  
33 deposited with the facility as specified in this section.

34 (3)(a) The facility must deposit a resident's personal funds in  
35 excess of one hundred dollars in an interest-bearing account or  
36 accounts that is separate from any of the facility's operating  
37 accounts, and that credits all interest earned on residents' funds to

1 that account. In pooled accounts, there must be a separate accounting  
2 for each resident's share.

3 (b) The facility must maintain a resident's personal funds that do  
4 not exceed one hundred dollars in a noninterest-bearing account,  
5 interest-bearing account, or petty cash fund.

6 (4) The facility must establish and maintain a system that assures  
7 a full and complete and separate accounting of each resident's personal  
8 funds entrusted to the facility on the resident's behalf.

9 (a) The system must preclude any commingling of resident funds with  
10 facility funds or with the funds of any person other than another  
11 resident.

12 (b) The individual financial record must be available on request to  
13 the resident or his or her legal representative.

14 (5) Upon the death of a resident with a personal fund deposited  
15 with the facility the facility must convey within forty-five days the  
16 resident's funds, and a final accounting of those funds, to the  
17 individual or probate jurisdiction administering the resident's estate.

18 NEW SECTION. **Sec. 6.** PRIVACY AND CONFIDENTIALITY. The resident  
19 has the right to personal privacy and confidentiality of his or her  
20 personal and clinical records.

21 (1) Personal privacy includes accommodations, medical treatment,  
22 written and telephone communications, personal care, visits, and  
23 meetings of family and resident groups. This does not require the  
24 facility to provide a private room for each resident however, a  
25 resident cannot be prohibited by the facility from meeting with guests  
26 in his or her bedroom if no roommates object.

27 (2) The resident may approve or refuse the release of personal and  
28 clinical records to an individual outside the facility unless otherwise  
29 provided by law.

30 NEW SECTION. **Sec. 7.** GRIEVANCES. A resident has the right to:

31 (1) Voice grievances. Such grievances include those with respect to  
32 treatment that has been furnished as well as that which has not been  
33 furnished; and

34 (2) Prompt efforts by the facility to resolve grievances the  
35 resident may have, including those with respect to the behavior of  
36 other residents.

1        NEW SECTION.    **Sec. 8.**    EXAMINATION OF SURVEY OR INSPECTION RESULTS.

2    A resident has the right to:

3        (1) Examine the results of the most recent survey or inspection of  
4    the facility conducted by federal or state surveyors or inspectors and  
5    plans of correction in effect with respect to the facility. A notice  
6    that the results are available must be publicly posted with the  
7    facility's state license, and the results must be made available for  
8    examination by the facility in a place readily accessible to residents;  
9    and

10       (2) Receive information from agencies acting as client advocates,  
11    and be afforded the opportunity to contact these agencies.

12       NEW SECTION.    **Sec. 9.**    MAIL AND TELEPHONE.    The resident has the  
13    right to privacy in communications, including the right to:

14       (1) Send and receive promptly mail that is unopened;

15       (2) Have access to stationery, postage, and writing implements at  
16    the resident's own expense; and

17       (3) Have reasonable access to the use of a telephone where calls  
18    can be made without being overheard.

19       NEW SECTION.    **Sec. 10.**    ACCESS AND VISITATION RIGHTS.    (1) The  
20    resident has the right and the facility must not interfere with access  
21    to any resident by the following:

22       (a) Any representative of the state;

23       (b) The resident's individual physician;

24       (c) The state long-term care ombudsman as established under chapter  
25    43.190 RCW;

26       (d) The agency responsible for the protection and advocacy system  
27    for developmentally disabled individuals as established under part C of  
28    the developmental disabilities assistance and bill of rights act;

29       (e) The agency responsible for the protection and advocacy system  
30    for mentally ill individuals as established under the protection and  
31    advocacy for mentally ill individuals act;

32       (f) Subject to reasonable restrictions to protect the rights of  
33    others and to the resident's right to deny or withdraw consent at any  
34    time, immediate family or other relatives of the resident and others  
35    who are visiting with the consent of the resident;

36       (g) The agency responsible for the protection and advocacy system  
37    for individuals with disabilities as established under section 509 of

1 the rehabilitation act of 1973, as amended, who are not served under  
2 the mandates of existing protection and advocacy systems created under  
3 federal law.

4 (2) The facility must provide reasonable access to a resident by an  
5 entity or individual that provides health, social, legal, or other  
6 services to the resident, subject to the resident's right to deny or  
7 withdraw consent at any time.

8 (3) The facility must allow representatives of the state ombudsman  
9 to examine a resident's clinical records with the permission of the  
10 resident or the resident's legal representative, and consistent with  
11 state and federal law.

12 NEW SECTION. **Sec. 11.** PERSONAL PROPERTY. (1) The resident has  
13 the right to retain and use personal possessions, including some  
14 furnishings, and appropriate clothing, as space permits, unless to do  
15 so would infringe upon the rights or health and safety of other  
16 residents.

17 (2) The facility shall, upon request, provide the resident with a  
18 lockable container or other lockable storage space for small items of  
19 personal property, unless the resident's individual room is lockable  
20 with a key issued to the resident.

21 NEW SECTION. **Sec. 12.** TRANSFER AND DISCHARGE REQUIREMENTS. (1)  
22 The facility must permit each resident to remain in the facility, and  
23 not transfer or discharge the resident from the facility unless:

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

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

27 (c) The health of individuals in the facility would otherwise be  
28 endangered;

29 (d) The resident has failed, after reasonable and appropriate  
30 notice, to pay for a stay at the facility; or

31 (e) The facility ceases to operate.

32 (2) Before a facility transfers or discharges a resident, the  
33 facility must:

34 (a) Notify the resident and, if known, a family member or legal  
35 representative of the resident of the transfer or discharge and the  
36 reasons for the move in writing and in a language and manner they  
37 understand;

1 (b) Record the reasons in the resident's record; and  
2 (c) Include in the notice the items described in subsection (4) of  
3 this section.

4 (3)(a) Except when specified in this subsection, the notice of  
5 transfer of discharge required under subsection (2) of this section  
6 must be made by the facility at least thirty days before the resident  
7 is transferred or discharged.

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

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

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

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

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

15 (4) The written notice specified in subsection (2) of this section  
16 must include the following:

17 (a) The reason for transfer or discharge;

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

19 (c) The location to which the resident is transferred or  
20 discharged;

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

23 (e) For residents with developmental disabilities, the mailing  
24 address and telephone number of the agency responsible for the  
25 protection and advocacy of developmentally disabled individuals  
26 established under part C of the developmental disabilities assistance  
27 and bill of rights act; and

28 (f) For residents who are mentally ill, the mailing address and  
29 telephone number of the agency responsible for the protection and  
30 advocacy of mentally ill individuals established under the protection  
31 and advocacy for mentally ill individuals act.

32 (5) A facility must provide sufficient preparation and orientation  
33 to residents to ensure safe and orderly transfer or discharge from the  
34 facility.

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

1        NEW SECTION.    **Sec. 13.**    RESTRAINTS.    The resident has the right to  
2 be free from physical restraint or chemical restraint imposed for  
3 purposes of discipline or convenience, and not required to treat the  
4 resident's medical symptoms.    This section does not require facility  
5 staff to review the judgment of the resident's physician in prescribing  
6 psychopharmacologic medications.

7        NEW SECTION.    **Sec. 14.**    ABUSE.    The resident has the right to be  
8 free from verbal, sexual, physical, and mental abuse, corporal  
9 punishment, and involuntary seclusion.

10        (1) The facility must:

11        (a) Not use verbal, mental, sexual, or physical abuse, including  
12 corporal punishment or involuntary seclusion;

13        (b) Not employ individuals who are barred from employment by RCW  
14 43.43.842.

15        (2) The department of social and health services shall provide  
16 background checks required by RCW 43.43.842 for employees of facilities  
17 licensed under chapter 18.20 RCW without charge to the facility.

18        NEW SECTION.    **Sec. 15.**    QUALITY OF LIFE.    A facility must care for  
19 its residents in a manner and in an environment that promotes  
20 maintenance or enhancement of each resident's quality of life.    A  
21 resident has the right to a safe, clean, comfortable, and homelike  
22 environment, allowing the resident to use his or her personal  
23 belongings to the extent possible.

24        (1) The facility must promote care for residents in a manner and in  
25 an environment that maintains or enhances each resident's dignity and  
26 respect in full recognition of his or her individuality.

27        (2) The resident has the right to:

28        (a) Choose activities, schedules, and health care consistent with  
29 his or her interests, assessments, and plans of care;

30        (b) Interact with members of the community both inside and outside  
31 the facility;

32        (c) Make choices about aspects of his or her life in the facility  
33 that are significant to the resident;

34        (d) Wear his or her own clothing and determine his or her own  
35 dress, hair style, or other personal effects according to individual  
36 preference, within reasonable house rules;

1 (e) Unless adjudged incompetent or otherwise found to be  
2 incapacitated under the laws of the state, participate in planning care  
3 and treatment or changes in care and treatment;

4 (f) Unless adjudged incompetent or otherwise found to be  
5 incapacitated under the laws of the state, to direct his or her own  
6 service plan and changes in the service plan, and to refuse any  
7 particular service.

8 (3)(a) A resident has the right to organize and participate in  
9 resident groups in the facility.

10 (b) A resident's family has the right to meet in the facility with  
11 the families of other residents in the facility.

12 (c) The facility must provide a resident or family group, if one  
13 exists, with meeting space.

14 (d) Staff or visitors may attend meetings at the group's  
15 invitation.

16 (e) When a resident or family group exists, the facility must  
17 listen to the views and act upon the grievances and recommendations of  
18 residents and families concerning proposed policy and operational  
19 decisions affecting resident care and life in the facility.

20 (f) The resident has the right to refuse to perform services for  
21 the facility except as voluntarily agreed by the resident and the  
22 facility in the resident's service plan.

23 (4) A resident has the right to participate in social, religious,  
24 and community activities that do not interfere with the rights of other  
25 residents in the facility.

26 (5) A resident has the right to:

27 (a) Reside and receive services in the facility with reasonable  
28 accommodation of individual needs and preferences, except when the  
29 health or safety of the individual or other residents would be  
30 endangered; and

31 (b) Receive notice before the resident's room or roommate in the  
32 facility is changed.

33 (6) A resident has the right to share a double room with his or her  
34 spouse when married residents live in the same facility and both  
35 spouses consent to the arrangement.

36 NEW SECTION. **Sec. 16.** FEE DISCLOSURE--DEPOSITS. (1) All long-  
37 term care facilities or nursing facilities licensed under chapter 18.51  
38 RCW that require payment of an admissions fee, deposit, or a minimum

1 stay fee, by or on behalf of a person seeking admissions to the long-  
2 term care facility or nursing facility, shall be required to provide  
3 the resident, or his or her representative, full disclosure in writing  
4 of the long-term care facility or nursing facility's schedule of  
5 charges for items and services provided by the facility and the amount  
6 of any admissions fees, deposits, or minimum stay fees. In addition,  
7 the long-term care facility or nursing facility shall also fully  
8 disclose in writing at the time of admissions what portion of the  
9 deposits, admissions fees, or minimum stay fees will be refunded to the  
10 resident or his or her representative if the resident leaves the long-  
11 term care facility or nursing facility. If a resident, during the first  
12 thirty days of residence, dies or is hospitalized and does not return  
13 to the facility, the facility shall refund any deposit already paid  
14 less the facility's per diem rate for the days the resident actually  
15 resided or reserved a bed in the facility notwithstanding any minimum  
16 stay policy. All long-term care facilities or nursing facilities  
17 covered under this section are required to refund any and all refunds  
18 due the resident or their representative within thirty days from the  
19 resident's date of discharge from the facility. Nothing in this  
20 section applies to provisions in contracts negotiated between a nursing  
21 facility or long-term care facility and a certified health plan, health  
22 or disability insurer, health maintenance organization, managed care  
23 organization, or similar entities.

24 (2) Where a long-term care facility or nursing facility requires  
25 the execution of an admission contract by or on behalf of an individual  
26 seeking admission to the facility, the terms of the contract shall be  
27 consistent with the requirements of this section.

28 NEW SECTION. **Sec. 17.** LIABILITY MAY NOT BE WAIVED. No long-term  
29 care facility or nursing facility licensed under chapter 18.51 RCW  
30 shall require residents to sign waivers of potential liability for  
31 losses of personal property.

32 NEW SECTION. **Sec. 18.** OMBUDSMAN IMPLEMENTATION DUTIES. The long-  
33 term care ombudsman shall monitor implementation of this chapter and  
34 determine the degree to which veterans' homes, nursing facilities,  
35 adult family homes, and boarding homes ensure that residents are able  
36 to exercise their rights. The long-term care ombudsman shall consult  
37 with the departments of health and social and health services, long-

1 term care facility organizations, resident groups, and senior and  
2 disable citizen organizations and report to the house of  
3 representatives committee on health care and the senate committee on  
4 health and human services concerning the implementation of this chapter  
5 with any applicable recommendations by July 1, 1995.

6 NEW SECTION. **Sec. 19.** REMEDIES CUMULATIVE. The remedies provided  
7 in this chapter are cumulative and shall not restrict an agency or  
8 person from seeking a remedy provided by law or from obtaining  
9 additional relief based on the same facts, including any remedy  
10 available to an individual at common law.

11 NEW SECTION. **Sec. 20.** RIGHTS ARE MINIMAL. The rights set forth  
12 in this chapter are the minimal rights guaranteed to all residents of  
13 long-term care facilities, and are not intended to diminish rights set  
14 forth in other state or federal laws that may contain additional  
15 rights.

16 NEW SECTION. **Sec. 21.** A new section is added to chapter 18.20 RCW  
17 to read as follows:

18 BOARDING HOMES. Sections 1 through 4, 5(1), and 6 through 20 of  
19 this act apply to this chapter and persons regulated under this  
20 chapter.

21 NEW SECTION. **Sec. 22.** A new section is added to chapter 18.51 RCW  
22 to read as follows:

23 NURSING HOMES. Sections 16 through 20 of this act apply to this  
24 chapter and persons regulated under this chapter.

25 NEW SECTION. **Sec. 23.** A new section is added to chapter 72.36 RCW  
26 to read as follows:

27 VETERAN HOME. Chapter 70.-- RCW (sections 1 through 20 of this  
28 act) applies to this chapter and persons regulated under this chapter.

29 NEW SECTION. **Sec. 24.** A new section is added to chapter 70.128  
30 RCW to read as follows:

31 ADULT HOMES. Sections 1 through 4, 5(1), and 6 through 20 of this  
32 act apply to this chapter and persons regulated under this chapter.

1       **Sec. 25.** RCW 18.20.120 and 1957 c 253 s 12 are each amended to  
2 read as follows:

3       All information received by the department or authorized health  
4 department through filed reports, inspections, or as otherwise  
5 authorized under this chapter, shall not be disclosed publicly in any  
6 manner as to identify individuals or boarding homes, except (~~in a~~  
7 ~~proceeding involving the question of licensure~~) at the specific  
8 request of a member of the public and disclosure is consistent with RCW  
9 42.17.260(1).

10       NEW SECTION. **Sec. 26.** SEVERABILITY. If any provision of this act  
11 or its application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

14       NEW SECTION. **Sec. 27.** FEDERAL SEVERABILITY. If any part of this  
15 act is found to be in conflict with federal requirements that are a  
16 prescribed condition to the allocation of federal funds to the state,  
17 the conflicting part of this act is inoperative solely to the extent of  
18 the conflict and with respect to the agencies directly affected, and  
19 this finding does not affect the operation of the remainder of this act  
20 in its application to the agencies concerned. The rules under this act  
21 shall meet federal requirements that are a necessary condition to the  
22 receipt of federal funds by the state.

23       NEW SECTION. **Sec. 28.** NULL AND VOID. If specific funding for the  
24 purposes of section 14(2) of this act, referencing this act by bill,  
25 section, and subsection number, is not provided by June 30, 1994, in  
26 the omnibus appropriations act, section 14(2) of this act is null and  
27 void.

28       NEW SECTION. **Sec. 29.** CAPTIONS. Captions as used in this act  
29 constitute no part of the law.

30       NEW SECTION. **Sec. 30.** CODIFICATION. Sections 1 through 20 of  
31 this act shall constitute a new chapter in Title 70 RCW.

32       NEW SECTION. **Sec. 31.** The house of representatives health care  
33 committee shall assess the potential impact of this act upon the

1 administration of an integrated long-term care system for persons with  
2 functional disabilities and make recommendations to the house of  
3 representatives by December 12, 1994.

4 NEW SECTION. **Sec. 32.** Nothing in this act shall effect the  
5 classifying of an adult family home for the purposes of zoning.

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