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HOUSE BILL 2154

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By Representatives R. Meyers, Valle, Carlson, Jones, Dellwo, Roland, Campbell, Dorn, Ogden, Kessler, Holm, Wineberry and Thibaudeau

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1 AN ACT Relating to residents of long-term care facilities; adding  
2 new sections to chapter 43.190 RCW; creating a new section; repealing  
3 RCW 18.20.120; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that long-term  
6 care facilities are a critical part of the state's long-term care  
7 options. It is the intent of the legislature that when individuals  
8 leave their homes and enter a long-term care facility that they receive  
9 appropriate services, be treated with courtesy, and continue to enjoy  
10 their basic civil and legal rights.

11 The legislature finds that a long-term care facility resident  
12 should have the opportunity to exercise reasonable control over life  
13 decisions and that choice, participation, privacy, and the opportunity  
14 to engage in religious, political, civic, recreational, and other  
15 social activities foster a sense of worth and enhance the quality of  
16 life.

17 The legislature further finds that the public interest would best  
18 be served by providing specific protections for all residents in all  
19 long-term care facilities.

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

4        (1) "Chemical restraint" means a drug prescribed with the intent of  
5 controlling mood, mental status, or behavior, that is used for the  
6 purpose of discipline or facility convenience, or is not required by  
7 physician order to treat the resident's medical symptoms.

8        (2) "Department" means either the department of social and health  
9 services or the department of health as the context may require.

10       (3) "Facility" means a long-term care facility.

11       (4) "Imminent danger" means serious physical harm to or death of a  
12 resident has occurred, or there is a serious threat to resident life,  
13 health, or safety, or the long-term care facility's capacity to render  
14 adequate care is substantially limited.

15       (5) "Long-term care facility" means a facility that is operated  
16 pursuant to chapter 18.20, 18.51, 72.36, or 74.08 RCW.

17       (6) "Physical restraint" means a manual method or physical or  
18 mechanical device, material, or equipment attached or adjacent to the  
19 resident's body which restricts freedom of movement or access to his or  
20 her body.

21       (7) "Provider" means a person who is or should be licensed to  
22 operate a long-term care facility.

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

26       NEW SECTION.        **Sec. 3.**        (1) A long-term care facility shall post  
27 conspicuously in an area of the facility accessible to the residents  
28 and visitors:

29        (a) Its license to operate;

30        (b) A notice that a copy of each inspection report received by the  
31 facility from the department for the past three years is available for  
32 public inspection;

33        (c) A grievance procedure that includes the name and telephone  
34 number of the office of the long-term care ombudsman and the department  
35 staff person responsible for licensing oversight of the facility;

36        (d) A list of the residents' rights as provided in section 5 of  
37 this act;

1 (e) A copy of house rules developed by the facility, as provided in  
2 section 9 of this act.

3 (2) A long-term care facility shall retain for public inspection a  
4 complete copy of each inspection report received by the facility from  
5 the department for the past three years.

6 NEW SECTION. **Sec. 4.** Each resident shall have the right, at  
7 reasonable times, upon oral or written request to inspect and copy, or  
8 have a copy provided for him or her by the facility, of any or all of  
9 their records. The facility may charge the resident the facility's  
10 cost of copies made pursuant to this section.

11 Neither the facility nor the department shall disclose the name of  
12 a resident except as may be necessary, or disclose a resident's records  
13 to a person or department other than the personnel of the facility or  
14 the department for their exclusive use except upon express written  
15 consent of the resident or court order unless the disclosure is  
16 required by state or federal law.

17 NEW SECTION. **Sec. 5.** Each resident shall have the right:

18 (a) To privacy in every aspect of daily living;

19 (b) To have guests or other residents in his or her room and to  
20 have privacy during such visits;

21 (c) To humane care and a humane environment, including but not  
22 limited to the right to a diet that is consistent with any religious or  
23 health-related restrictions and to refuse a restricted diet;

24 (d) To be treated with dignity and respect;

25 (e) To wear his or her own clothing and determine his or her own  
26 dress, hair style, or other personal effects according to individual  
27 preference;

28 (f) To retain and use his or her own personal property in the  
29 resident's own living area so as to maintain individuality and personal  
30 dignity, with consideration given to the space available in the  
31 facility for large items such as furniture;

32 (g) To have a separate storage area in his or her own living area  
33 and at least one locked container or drawer for keeping personal  
34 property;

35 (h) To interact freely with others both within the facility and in  
36 the community;

1 (i) To receive and send unopened correspondence and to be provided  
2 with pen, paper, envelopes, and stamps at the resident's own expense if  
3 the resident is unable to obtain them for himself or herself;

4 (j) To private access to a telephone for outgoing and incoming  
5 calls;

6 (k) To make contacts with the community, and to achieve the highest  
7 level of independence, autonomy, and interaction with the community of  
8 which the resident is capable;

9 (l) To leave and return freely to the facility;

10 (m) To refuse to perform services for the facility except as  
11 voluntarily agreed to by the resident and the provider, and if  
12 consistent with the resident's plan of care;

13 (n) To practice the religion of his or her choice or to abstain  
14 from religious practice;

15 (o) To control his or her receipt of health-related services  
16 including but not limited to the right to retain the services of his or  
17 her own personal health care providers. Each resident shall have the  
18 right to confidentiality and privacy concerning his or her medical or  
19 dental condition and treatment;

20 (p) To voice grievances and recommend changes in policies and  
21 services to the provider, and to outside representatives of his or her  
22 choice, free from restraint, interference, coercion, discrimination, or  
23 reprisal;

24 (q) To be free from discrimination as provided by state and federal  
25 law;

26 (r) To reside and receive services with reasonable accommodation of  
27 individual needs and preferences.

28 (2) A facility shall:

29 (a) Provide a place and written procedures for safekeeping of  
30 residents' valuable personal possessions upon request of the resident;

31 (b) Not require residents to sign waivers of liability for losses  
32 or thefts of personal possessions;

33 (c) Provide services to residents so as to attain or maintain each  
34 resident's highest degree of functioning possible and to be compatible  
35 with individual safety and welfare.

36 (3) Exercise of the rights included in this section may not result  
37 in imminent danger to the safety or welfare of the resident or other  
38 residents of the facility or serious infringement of the rights of

1 other residents in the facility. Reasonable accommodations that may  
2 eliminate such danger or infringement shall be made by the facility.

3 NEW SECTION. **Sec. 6.** (1) Each resident shall have the right to  
4 manage his or her personal funds unless the rights of the resident are  
5 otherwise restricted by state or federal law.

6 (2) If the resident wishes to entrust funds to the facility to  
7 protect the resident's funds, the facility:

8 (a) Shall accept funds from a resident for safekeeping and  
9 managing, if the facility receives written authorization from the  
10 resident;

11 (b) Shall maintain and allow each resident access to a written  
12 record of all financial arrangements and transactions involving the  
13 individual resident's funds;

14 (c) Shall keep any funds received from a resident for safekeeping  
15 in an account separate from all other funds of the facility that  
16 clearly indicates that the facility has only a fiduciary interest in  
17 the funds and any interest from the account shall accrue to the  
18 resident. The facility may keep up to one hundred dollars of a  
19 resident's money in a noninterest-bearing account or petty cash fund,  
20 to be readily available for the resident's current expenditures. Upon  
21 written request of the resident, the facility may increase the amount  
22 of that resident's money in a noninterest-bearing account or petty cash  
23 fund;

24 (d) Shall return to the resident upon written request, all or any  
25 part of the resident's funds given to the facility for safekeeping,  
26 including the interest accrued from deposits;

27 (e) Shall place any monthly allowance to which a resident is  
28 entitled in that resident's personal account, or give it to the  
29 resident, unless the facility has written authorization from the  
30 resident to handle it differently;

31 (f) Upon the death of a resident, shall provide the executor or  
32 administrator of the resident's estate with a complete accounting of  
33 all the resident's funds and personal property, including any funds and  
34 personal property of the resident being held by the facility.

35 (3) No residential care facility may require advance payment by a  
36 resident of more than one month's fees. If a resident leaves the  
37 facility or has died before the last day of a month, and the facility

1 has been paid the full month's fee for that resident's care, the  
2 facility shall refund a pro rata portion of the fee representing that  
3 portion of the month during which the resident was not cared for by the  
4 facility.

5 NEW SECTION. **Sec. 7.** The facility shall take reasonable actions  
6 to ensure that residents are not physically, sexually, or otherwise  
7 abused or exploited.

8 Physical restraints shall not be used on a resident by a facility,  
9 except when a resident's actions present an imminent danger to himself  
10 or herself, or others, and only until appropriate action can be taken  
11 by medical, emergency, or police personnel. It is the responsibility  
12 of the facility to seek assistance immediately.

13 Chemical restraints shall not be used on a resident by a facility,  
14 except that this section does not prohibit a resident from voluntarily  
15 taking tranquilizers or other medication that is prescribed by a  
16 licensed physician for an associated mental health diagnosis.

17 NEW SECTION. **Sec. 8.** The facility shall give each resident a copy  
18 of the rights enumerated in sections 4 through 6 of this act and the  
19 names, addresses, and telephone numbers of the office of the long-term  
20 care ombudsman agency responsible for inspections or complaints, and  
21 any other advocates who are available to assist residents in  
22 understanding and enforcing these rights.

23 The facility shall be responsible for making copies of such rights  
24 and distributing them to each resident and the resident's immediate  
25 family members, if known, upon admission to the facility.

26 If a resident is unable to read the list of rights, the rights  
27 shall be read to the resident in a language the resident understands.  
28 The provider shall answer any questions the resident may have regarding  
29 the rights.

30 After a copy of the rights has been given or read to the resident,  
31 the resident shall sign and date a written acknowledgement that the  
32 resident has read or has been read the rights, that the resident  
33 understands the rights, and that any questions that the resident has  
34 regarding the rights have been answered by the facility. A copy of the  
35 written acknowledgement signed and dated by the resident shall be  
36 placed in the resident's records.

1        NEW SECTION.    **Sec. 9.** Each facility may have house rules regarding  
2 the operation of the facility. Prior to admission to a facility, a  
3 resident and the resident's immediate family, if known, shall be given  
4 a copy of the house rules of the facility to which he or she is seeking  
5 admission. House rules which unreasonably restrict the rights of any  
6 resident as provided in sections 4 through 6 of this act shall be null  
7 and void.

8        NEW SECTION.    **Sec. 10.** (1) The facility must permit each resident  
9 to remain in the facility, and not transfer or discharge the resident  
10 from the facility unless:

11        (a) The resident requires emergency or planned hospitalization;

12        (b) The transfer or discharge is necessary for the resident's  
13 welfare and the resident's needs cannot be met in the facility;

14        (c) The resident's health has improved and he or she is able to  
15 move to a lesser care facility or return to community living;

16        (d) The safety of the individuals in the facility is endangered by  
17 an overt act of the resident;

18        (e) The health of individuals in the facility would otherwise be  
19 endangered by a specific condition of the resident;

20        (f) The resident has failed, after reasonable and appropriate  
21 notice, to pay for a stay at the facility.

22        (2) Before a facility transfers or discharges a resident, the  
23 facility must:

24        (a) Notify the resident and, if known, a family member or legal  
25 representative of the resident of the transfer or discharge and the  
26 reasons for the move in writing and in a language and manner they  
27 understand;

28        (b) Record the reasons in the resident's clinical record; and

29        (c) Include in the notice the items described in subsection (1) of  
30 this section. The notice of transfer or discharge required under this  
31 section must be made by the facility at least thirty days before the  
32 resident is transferred or discharged, unless an emergency exists which  
33 would result in imminent danger.

34        (3) The written notice specified in subsection (2) of this section  
35 shall include the following:

36        (a) The reason for transfer or discharge;

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

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

1 (d) The name, address, and telephone number of the state long-term  
2 care ombudsman.

3 (4) A resident who has been transferred or discharged in violation  
4 of this section has the right to be readmitted immediately to the next  
5 available semiprivate, sex-appropriate bed in the facility.

6 NEW SECTION. **Sec. 11.** A resident, the long-term care ombudsman,  
7 or the department may bring an action for a temporary restraining  
8 order, preliminary injunction, or permanent injunction against a long-  
9 term care facility to enjoin:

10 (1) An act or omission that constitutes a violation of this  
11 chapter; or

12 (2) Operation of:

13 (a) A licensed facility against which procedures for nonrenewal or  
14 revocation of the facility's license have been initiated and that has  
15 violations that have resulted in conditions that present an imminent  
16 danger; or

17 (b) An unlicensed facility required by law to be licensed.

18 NEW SECTION. **Sec. 12.** The remedies provided in this chapter are  
19 cumulative and shall not restrict an agency or person from seeking a  
20 remedy provided by law or from obtaining additional relief based upon  
21 the same facts.

22 NEW SECTION. **Sec. 13.** The rights set forth in this chapter are  
23 the minimal rights guaranteed to all residents of long-term care  
24 facilities and are not intended to diminish rights set forth in other  
25 state or federal laws that may contain additional rights.

26 NEW SECTION. **Sec. 14.** The legislature finds that to comply with  
27 the federal older Americans act, as amended (42 U.S.C. Sec. 3001 et  
28 seq.), and to effectively assist residents, patients, and clients of  
29 long-term care facilities in the assertion of their rights, the  
30 following provisions concerning the long-term care ombudsman program  
31 are adopted:

32 (1) The department of social and health services shall adopt rules  
33 to ensure that the long-term care ombudsman, and his or her  
34 representatives, shall have complete access to long-term care  
35 facilities and residents, and appropriate access to the medical,



1 social, and financial records of a resident and the facility,  
2 consistent with federal and state laws;

3 (2) It is unlawful to willfully interfere with the long-term care  
4 ombudsman program, or its representatives, in the performance of its  
5 official duties, as defined by federal or state law;

6 (3) It is unlawful for a facility or other entity to retaliate in  
7 any fashion against a resident, employee, or other person for filing a  
8 complaint with, providing information to, or otherwise cooperating with  
9 the long-term care ombudsman program or its representatives; and

10 (4) Violation of this section, after written notice by the  
11 department or a representative of the ombudsman program, shall subject  
12 the facility or entity to a fine by the department not to exceed one  
13 hundred dollars for each day of subsequent violations.

14 NEW SECTION. **Sec. 15.** The legislature finds that the practices  
15 covered by this chapter are matters vitally affecting the public  
16 interest for the purpose of applying the consumer protection act,  
17 chapter 19.86 RCW. Violations of this chapter are not reasonable in  
18 relation to the development and preservation of business. A violation  
19 of this chapter is an unfair or deceptive act in trade or commerce and  
20 an unfair method of competition for the purpose of applying the  
21 consumer protection act, chapter 19.86 RCW.

22 NEW SECTION. **Sec. 16.** RCW 18.20.120 and 1957 c 253 s 12 are each  
23 repealed.

24 NEW SECTION. **Sec. 17.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 18.** If any part of this act is found to be in  
29 conflict with federal requirements that are a prescribed condition to  
30 the allocation of federal funds to the state, the conflicting part of  
31 this act is inoperative solely to the extent of the conflict and with  
32 respect to the agencies directly affected, and this finding does not  
33 affect the operation of the remainder of this act in its application to  
34 the agencies concerned. The rules under this act shall meet federal

1 requirements that are a necessary condition to the receipt of federal  
2 funds by the state.

3 NEW SECTION. **Sec. 19.** Sections 1 through 15 of this act are each  
4 added to chapter 43.190 RCW.

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