FINAL BILL REPORT
E2SHB 1908

PARTIAL VETO
C 18 L 95 E 1
Synopsis as Enacted

Brief Description: Modifying long-term care provisions.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Dyer, Cooke, Ballasiotes, Stevens, Elliot, Talcott, Cairnes, Lambert, Pelesky, Hymes, Robertson, Mielke, Carrell, Backlund and L. Thomas).

House Committee on Health Care
House Committee on Appropriations

Background: The Aging and Adult Services Administration is the agency within the state Department of Social and Health Services (DSHS) that has management responsibility for publicly funded long-term care services such as nursing homes, chore services, Medicaid personal care, adult family homes, Community Options Program Entry System (COPES), and boarding homes. In Washington state, approximately 17,000 clients receive care in a nursing home, while 6,000 persons with disabilities live in licensed adult family homes, and approximately 18,000 are receiving some form of long-term care in their own homes.

Expenditures in state-administered, long-term care programs have increased even more rapidly over the past 10 years than the number of persons needing care. In addition, every year the state purchases a higher portion of long-term care services. After controlling for inflation, Aging and Adult Services expenditures have doubled over the past decade and have grown twice as fast as the total state budget. Three-quarters of the growth in long-term care expenditures is due to higher costs per person served. State costs per resident have grown 63 percent in community care while the cost of care in nursing homes has grown 88 percent.

In 1994, the Legislature directed the DSHS to develop a plan for reviewing and reducing Aging and Adult Services expenditures to comply with the 10.3 percent growth rate permitted under Initiative 601. Without changes, the projected growth rate is approximately 28 percent.

Several factors contribute to this increase:

- As the nursing facility rate increases, more people are eligible for Medicaid.

- The federal government has protected Medicaid spouses from impoverishment.
- Creative estate planning use is increasing by seniors.
- There have been demographic increases in persons with disabilities.
- Nursing home payment rates have been increasing an average of 9 percent per year.

To address this rapid growth, it has been recommended that:

- Lower cost long-term care options be expanded.
- The manner in which services are utilized and accessed be reviewed.
- Regulatory reforms be developed.
- The extent to which people can pay for their own care be identified.
- The rate of increase in nursing home payment rates be reduced.

Summary:

LONG-TERM CARE PROVISIONS

NURSING HOME CENSUS REDUCTION - By June 30, 1997, the Department of Social and Health Services (DSHS) must undertake a reduction of the nursing home medicaid census by at least 1,600 by assisting individuals to obtain other types of care of their choice, such as assisted living, enhanced adult residential care, and other home and community services. To the extent of available funding, the department will provide case management services and assessment of home and community services that could meet resident's needs to those nursing facility residents who are eligible for Medicaid or likely to be eligible in 180 days. A nursing facility may not admit any Medicaid eligible individual unless the individual has been assessed by the department, but appropriate hospital discharge may not be delayed pending the assessment. The department is allowed to authorize supplemental rates for nursing homes that temporarily or permanently convert their beds for use as enhanced adult residential care services. The supplemental rate can be given to a nursing home for up to four years if the nursing home permanently de-licenses nursing beds and converts the beds to assisted living units.

HOSPITAL DISCHARGE PLANNING FOR LONG-TERM CARE - The DSHS is required to develop, distribute, and make available long-term care resource materials and information to hospitals and other appropriate settings to be used for patients needing discharge services. Hospitals are required to provide up-to-date and appropriate information about long-term care options to the patients or their legal representatives or family. Hospitals are also required to work with the department and Area Agencies on Aging to conduct discharge planning to ensure that each patient is given a full array of appropriate choices for long-term care. The department is authorized to provide an assessment of hospital patients and nursing home residents who need long-term care and may become eligible for Medicaid within 180 days of

admission to a nursing home. The department is directed to establish a pilot project in three areas of the state to assist hospitals, patients, and their families in making appropriate and informed choices on long-term care service options. A report to the Legislature is required on the pilot project by December 12, 1995.

COMPREHENSIVE LONG-TERM CARE SYSTEM REFORM - The Legislature finds that the intent of the 1989 long-term care reforms remain applicable and the need to streamline bureaucratic fragmentation and to facilitate the development of an integrated long-term care system based on functional disability remains pressing.

The Legislative Budget Committee, in consultation with the Washington Health Care Policy Board, is directed to develop a plan by December 12, 1995, that will:

- Reduce and reorganize the long-term care bureaucracy by consolidating the administration of all categorical chronic long-term care services;
- Implement a streamlined client-centered long-term care delivery system based on functional disability;
- Facilitate greater participation in long-term care administration by local communities, appropriately relying on families and community volunteers;
- Seek alternative funding sources and the use of long-term care insurance;
- Implement a case mix reimbursement system for nursing homes;
- Separate federal Older Americans Act funds and ask that the administration of the funds be separated from Aging and Adult Services; and
- Review Senior Services Act funds to identify whether the funds are being used for the most disabled elderly.

NEW DEFINITIONS - New definitions are added. "Cost effective care" means care which is necessary to enable an individual to achieve his or her "most appropriate level of physical, mental and psychosocial well-being, in an environment which 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."

"Enhanced adult residential care" is defined as personal care services and limited nursing services provided by a boarding home that has a contract with the Department of Social and Health Services. "Enhanced adult residential care" is added to home and community services under boarding home licensure and does not require architectural modifications.

QUALITY IMPROVEMENTS - The DSHS is required to implement a quality improvement system for long-term care services guided by principles of consumer-centered outcomes, supporting providers, training, case management, technical assistance, and problem prevention.

A toll-free number must be established to receive and investigate complaints for all facilities that are licensed by, or have a contract with, Aging and Adult Services. Providers must post the toll-free number.

ENHANCED RESIDENTIAL CARE AND ASSISTED LIVING SERVICES - The DSHS may contract with boarding homes, including those licensed by Indian tribes, for the provision of enhanced adult residential care and assisted living services. The department is also required to develop certain standards by rule for those providers who opt to provide such services. The authority of the department only extends to the services and facilities provided to enhanced adult residential care or assisted living services clients of providers who contract with the department for enhanced adult residential care or assisted living services. Minimum training and qualification requirements are established for these providers. The department is prohibited from contracting for any such services if the provider has a history of significant compliance difficulties. The department is authorized to impose penalties on assisted living, enhanced adult residential care, and adult residential care providers for violation of standards. The Department of Health is also authorized to impose penalties on boarding homes for violations of standards. The DSHS is authorized to pay higher rates for enhanced adult residential care to nursing homes which temporarily or permanently convert nursing home beds to this type of care. The DSHS is also authorized to pay higher assisted living rates for up to four years to nursing homes which permanently de-license nursing home beds and convert the beds to assisted living units.

ADULT FAMILY HOME REGULATIONS - Adult family homes are directed to provide appropriate care through a plan of care that promotes the residents' ability to function at the most appropriate level of care consistent with their needs. Clients are given the right to participate in the development of their plan of care. The DSHS is authorized to impose civil penalties on persons operating an adult family home without a license. Adult family homes petitioning the department for a license renewal must apply at least 60 days prior to the current license expiration date for the license. The department is allowed to make unannounced inspections of adult family homes at any time, not just on the basis of complaints. Adult family homes are to make certain documents available to the department, the public, and residents. The department is also required to develop corrective measures for violations found in adult family homes and is allowed to provide technical assistance and an opportunity to report on a corrective plan. Adult family homes must meet single family residence requirements as they pertain to local licensing, zoning, building and housing codes. All adult family homes are prohibited from interfering with the ombudsman and are subject to fines if they are found in violation. Additional sanctions are imposed for violations of standards. The department is required to maintain a toll-free number for complaints by adult family home residents.

CHORE SERVICES - The DSHS is directed to not authorize chore services when the needs of the individual can be met by another community service. The department is also directed to establish a monthly lid on chore expenditures. Priority for services is to be given to persons who were receiving chore services as of June 30, 1995, people for whom chore services are necessary to return to the community from a nursing home or are necessary to prevent nursing home placement, or persons who are referred from adult protective service investigations. Chore services clients are required to participate in their cost of care. The client will retain an amount equal to 100 percent of the federal poverty level for maintenance needs when calculating chore client participation amounts.

HOSPITAL DISCHARGE STAFFING/CONTRACTING WITH AAA's FOR SERVICE REAUTHORIZATION - Legislative intent is stated that staff reassigned by the department as a result of contracting reauthorization responsibilities will be dedicated for long-term care discharge planning. The DSHS is authorized to contract with Area Agencies on Aging (AAA's) to provide case management services for persons receiving care in their home and to reassess and reauthorize clients for services.

CHORE SERVICES TECHNICAL CHANGES - Technical changes are made that allow the DSHS to develop the chore program consistent with changes mandated under the bill. The requirement that the department establish a sliding fee schedule is eliminated. The department is authorized to establish a methodology for client participation.

NURSING HOME INSPECTIONS - The department is required to make inspections of nursing homes at least every 18 months and to set a minimum length of time between inspections for citation-free facilities of 12 months to allow for flexibility for certification and licensure requirements.

NURSING HOME RECORD RETENTION - Nursing homes are required to maintain patient clinical records for eight years rather than 10 years to be consistent with civil tort actions.

NURSE DELEGATION - A nurse is authorized to delegate specific nursing care tasks to registered or certified nursing assistants serving patients in three settings: community residential programs serving the developmentally disabled; adult family homes; and boarding homes providing assisted-living services.

The nursing assistant qualifying for delegated nursing tasks must first complete a basic core training program provided by the DSHS, and meet any additional training requirements identified by the Nursing Care Quality Assurance Commission.

The nursing tasks that may be delegated are limited to oral and topical medications; nose, ear, eye drops, and ointments; dressing changes and catheterization; suppositories, enemas, ostomy care; blood glucose monitoring; and gastrostomy feedings.

The commission is required to develop by rule nurse delegation protocols which specify the requirements for the delegating process and identify any additional training. These requirements provide that the delegating is at the discretion of the nurse; is only for a specific patient in a stable and predictable condition and is not transferable; requires the informed consent of the patient as well as the consent of the nurse and nursing assistant; provides assessment of competence, a plan of supervision, documentation and written instructions on the tasks; and requires a determination of any additional training or other requirements specified by the act.

The development of a basic core training curriculum by the DSHS, in conjunction with advisory panels, is required for nursing assistants providing delegated tasks. The department is also required to develop and clarify reimbursement policies and barriers to current delegation.

Nurses and nursing assistants are accountable for their own individual actions in the delegation process. They are immune from liability when acting within the guidelines of the delegation protocol. They may not be coerced into delegating, and are not subject to any employer reprisal or discipline for refusing, nor may the facility discriminate or retaliate against any person who files a complaint. A toll-free phone line must be established to receive complaints related to nurse delegation which are to be forwarded to the commission. Civil fines up to $1,000 are imposed on facilities that knowingly permit unlawful delegation of nursing tasks.

The Secretary of Health, in consultation with the commission, the University of Washington's Schools of Public Health and Nursing, and the Department of Social and Health Services, must monitor the implementation of these provisions and report to the Legislature by December 31, 1996, and again by December 31, 1997, on the effectiveness of nurse delegation and associated problems, with recommendations for improvement. A legislative task force is established to monitor the implementation of these provisions and to study the effectiveness of nurse delegation protocols and training with a report to the Legislature by February 1, 1997.

ESTATE RECOVERY, NOTIFICATIONS, AND ASSET TRANSFERS - Penalties are established against individuals who knowingly receive assets at less than fair market when done for the purpose of establishing Medicaid eligibility. Assets of individuals who receive any home and community services, and specifically chore service, are subject to estate recovery. The DSHS is allowed to pay for attorneys, guardians, and other agencies when necessary to protect assets and collect bad debts. Notice of various legal notices, filed regarding a deceased person's estate, are

required to be sent to the department. Claims by the department for the cost of long-term care services must be included in the priority list of debts which must be paid by the estate. The department is included in the priority list of administrators who may be named for an estate if an individual dies without a will. The department is required to notify the trustee of any prearrangement funeral service trust and the cemetery authority that it has a claim on the estate of a beneficiary who received long-term care services. The trustee and cemetery authority must then give notice of the beneficiary's death to the department's Office of Financial Recovery, who must then file this claim within 30 days. Prearranged funeral service contracts are required to contain language that informs the individual that any unused funds from the policy may be subject to claims by the state for long-term care services that the state had funded. The recovery procedure is outlined.

NURSING HOME DISCHARGE - The department is required to follow a notification and appeals process if a Medicaid resident is discharged and chooses to remain in a nursing facility.

FINANCIAL RECOVERY UPON DEATH - Any funds held by the nursing home facility on behalf of a resident who received long-term care paid for by the state must be sent to department's Office of Financial Recovery within 45 days of the recipient's death. The department is required to establish release for use for burial expenses. The department is allowed to recover against estates as soon as practicable, but recovery will not include property exempt from estate claims under federal law or treaty, including tribal artifacts. Church or religiously operated nursing facilities, which provide care exclusively to members of its convent, rectory monastery or other clergy members, are exempt from the operating standards for covered facilities.

NURSING HOME COMPONENT RATES - The DSHS is authorized to base initial nursing services, food, administrative, and operational rate components rates for the purpose of reimbursement on a formula using the median for facilities in the same county. This is applicable to any facilities receiving original Certificate of Need approval prior to June 30, 1988, and commencing operations on or after January 2, 1995.

VOLUNTARY NURSING HOME BED CONVERSION - A nursing home may "bank" or hold in reserve its nursing home beds for any purpose that enhances the quality of life for residents, in addition to those specified by law, without the requirement of a Certificate of Need.

A health facility or health maintenance organization that provides services similar to the services of an applicant for a Certificate of Need in the same service area, and who has testified as an interested party and submitted evidence at a public hearing on the application, may also present testimony and argument at any adjudicative proceeding of the application on appeal. The interested party must first have requested

in writing to be informed of the DSHS's decision. The interested party must also be afforded an opportunity to comment in advance of any proposed settlement.

When a building owner has secured an interest in nursing home beds, a licensee, if different from the building owner, must obtain and submit to the department written approval from the building owner to reduce the number of beds in the facility. A building owner may complete a replacement project if a licensee is unable to complete the project.

A licensee may replace existing beds without a Certificate of Need if the licensee has operated the beds for at least one year. If a nursing home closes, the re-use of existing beds will require a Certificate of Need, but the determination of need will be deemed met if the applicant is the licensee.

NURSING HOME CERTIFICATE OF NEED IN ECONOMICALLY DISTRESSED AREA - Any nursing home is allowed an additional extension of up to 60 months to apply for Certificate of Need if the nursing home is located in an economically distressed area.

LONG-TERM CARE COMPUTER INFORMATION PILOT PROJECT - The DSHS is required to establish an on-line computer information system for long-term care on a pilot basis and to make a report to the Legislature by December 1, 1996.

LONG-TERM CARE INSURANCE PARTNERSHIP PROGRAM - The Office of the Insurance Commissioner (OIC) is required to work in conjunction with DSHS to coordinate the Long-term Care Partnership Program. The 1998 ending date for the program is eliminated and the program is extended indefinitely. Technical changes are made that allow the partnership program to be implemented according to new federal guidelines and clarify the ability of policy holders to exclude all or some of their assets in determining Medicaid eligibility as specified by the DSHS and the OIC.

Modifications are made to the rules that the OIC is required to adopt regarding the partnership policies. Under these rules, policies must now contain coverage for nursing home care, and an alternative plan for home care as defined by the insurance commissioner that, if not wanted, must be rejected in writing by the potential policy holder. Home and community-based long-term care services are made optional. In addition, automatic inflation protection is made mandatory for policy holders under the age of 80 and optional for policy holders over the age of 80. Insurers offering partnership policies are required to provide information to the OIC for annual reporting, based on a uniform data set defined by the commissioner. The development of consumer education for the partnership program must also include the cooperation of members of the long-term care insurance industry. The program's reporting requirement is extended until 1998.

LEGAL PROTECTION FOR FRAIL VULNERABLE ADULTS - Legislative intent to provide frail elders and vulnerable persons with the protection of the courts is stated. Frail elders and vulnerable persons, age 60 or older, who are abused, neglected, exploited or abandoned (as defined), while residing in certain licensed care facilities or receiving other licensed care, may sue for damages, including injuries, pain and suffering and loss of property. If they prevail in the legal action, they are awarded actual damages, costs of the suit (including fees for guardians ad litem and expert witnesses), and reasonable attorney's fees. The right of action can survive the plaintiff, for the benefit of the surviving spouse, children, or heirs.

Under the definition of "exploitation," reference to trust income is included as one of the vulnerable person's income items that should also be considered protected.

Persons receiving a well-recognized spiritual method of healing are exempted and may not for that reason alone be considered abandoned, abused, or neglected under this law.

Parties to a dispute regarding the care or treatment of a frail elder or vulnerable person are encouraged whenever feasible to use the least formal means available to resolve the dispute, such as through direct discussion with the health care provider, use of the long-term care ombudsman, and if necessary, recourse through regulatory agencies.

NURSING HOME PAYMENT CHANGES

DEFINITIONS - A definition of "client day" and "recipient day" is established. The terms "rebased rate" and "cost-rebased rate" are defined as rates based on prior calendar year costs.

AUDITS - The requirement to audit at least once every three years is eliminated. Audits will be performed periodically as determined necessary by the DSHS. The state auditor's audit of the department's nursing home auditing is changed from annually to at least once every three years.

SETTLEMENT OF MEDICAID OVER PAYMENTS - Provisions related to the settlement of Medicaid overpayments are modified. A new process for handling audits is included that establishes a right to appeal audits, rates, and settlements. The DSHS and nursing homes are required to pay debts owed within 60 days of settlement.

NONMEDICAID THERAPY COSTS - The legislative authority to treat, for nursing home reimbursement purposes, nonmedicaid therapy costs as unallowable is clarified. In addition, language is added that specifies that any prior year costs which will no

longer be realized by a nursing home due to statutory changes will no longer be considered when setting prospective rates.

NEW CASE MIX NURSING HOME REIMBURSEMENT SYSTEM - The Legislature declares its intent to create a new system for establishing nursing home payment rates no later than July 1, 1998. Any payments to nursing homes after June 30, 1998, will be based on the new system, which shall include a case-mix methodology for paying for nursing services. The DSHS is directed to develop a new system that matches nursing facility payments to patient care needs while providing incentives for cost control and efficiency. The department must provide annual reports to the Legislature as well as a plan for adopting the new system no later than July 1, 1998. The current nursing facility rate setting statutes are repealed effective June 30, 1998.

REIMBURSEMENT RATE CHANGES - Nursing home payments for nursing services, food, administrative, and operational rate components are modified to specify that in fiscal year 1997, rates will be determined using fiscal year 1996 rates inflated by the Health Care Financing Administration (HCFA) nursing home inflation index, instead of inflated by the HCFA nursing home index times 1.5. Beginning in fiscal year 1997, current funding will be inflated. In fiscal year 1998, rates will be determined using fiscal year 1997 rates inflated by the HCFA index times 1.25, instead of rebasing rates using calendar year 1996 costs and inflated by the implicit price deflator (IPD). (Component rates for property and return-on-investment will be reset annually, as under current law.)

NURSING HOME MINIMUM OCCUPANCY - The minimum occupancy provisions of the rate setting process are changed so that rates will be set using a minimum occupancy of 90 percent instead of 85 percent. This minimum will be applied to all rate components. Provisions are included that specify the use of an 85 percent minimum occupancy for nursing homes that are new facilities or have had substantial capital improvements during the previous year.

CURRENT FUNDING RATE ADJUSTMENTS - The provision authorizing the DSHS to make interim payment rate adjustments (current funding) specifies that the department is to stay within the funding level authorized by the Legislature. The department is authorized to make rules in order to ensure that spending limitations are not exceeded.

HCFA NURSING HOME INFLATION INDEX - Current nursing home payments for the nursing services rate component are modified to specify that in fiscal year 1997, rates will be determined using fiscal year 1996 rates inflated by the HCFA nursing home inflation index, instead of inflated by the HCFA nursing home index times 1.5. It is specified that in fiscal year 1998, rates will be determined using fiscal year 1997

rates inflated by the HCFA index times 1.25, instead of rebasing rates using calendar year 1996 costs and inflated by the IPD.

REIMBURSEMENT RATE COMPONENT MODIFICATIONS - Nursing home payments for the food rate component are modified to specify that in fiscal year 1997, rates will be determined using fiscal year 1996 rates inflated by the (HCFA) nursing home inflation index, instead of by the HCFA nursing home index times 1.5. It is specified that in fiscal year 1998, rates will be determined using fiscal year 1997 rates inflated by the HCFA index times 1.25, instead of rebasing rates using calendar year 1996 costs and inflated by the (IPD). Nursing home payments for the administrative rate component are modified to specify that in fiscal year 1997, rates will be determined using fiscal year 1996 rates inflated by the HCFA nursing home inflation index, instead of inflated by the HCFA nursing home index times 1.5.

MULTIPLE YEAR CYCLES - Reference to multiple year cycles in the property rate component and applying the minimum occupancy level and to multiple year cycles in the return-on-investment rate component and applying the minimum occupancy level are eliminated.

MEDICAID OVERPAYMENTS - Provisions related to settlement of medicaid overpayments are removed. The DSHS and nursing homes are required to pay debts owed within 60 days of settlement. The department is authorized to obtain security on debts in excess of $50,000 and to establish an appeals process for audits, rates, and settlements.

Votes on Final Passage:

First Special Session
House 90 0
Senate 45 0

Effective: July 1, 1995

Partial Veto Summary: The partial veto removes provisions requiring the Legislative Budget Committee to develop a working plan to reform and streamline the long-term care delivery system. The extension of 60 months to apply for a nursing home Certificate of Need and the extension, from 12 to 18 months, for nursing home inspections are also eliminated.