

FINAL BILL REPORT

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PARTIAL VETO

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Synopsis as Enacted

Brief Description: Adopting the long-term care reorganization and standards of care reform act.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Dyer, Backlund, Skinner, Talcott, Schoesler, Mitchell and Cooke).

House Committee on Health Care **House Committee on Appropriations**

Background: The Department of Social and Health Services (DSHS) will spend over \$10 billion in federal and state dollars to serve approximately a million citizens during the 1995-97 biennium. It serves 20 percent of the state population and 30 percent of all Washington families. Seventy percent of the DSHS budget is expended for health and long-term care services for low income families, the elderly, and persons with physical, mental, and developmental disabilities.

The administration and delivery of state funded long-term care services is conducted by three major administrative components within the Department of Social and Health services - Aging and Adult Services Administration, Mental Health Services, and Developmental Disabilities Services. Boarding homes, a key long-term care residential program, is administered by the Department of Health.

Aging and Adult Services Administration. Aging and Adult Services is the largest of the three long-term care programs. It is mandated to develop and manage a comprehensive and coordinated service delivery system responsive to the needs of older and disabled adults. Aging and Adult Services administers the following programs:

- residential care, home care, and nursing home care
- functional assessment for disabled adults and seniors
- financial eligibility for long-term care benefits
- case management for the elderly in residential care settings
- coordination with Area Agency on Aging
- quality assurance programs for nursing homes, adult family homes, assisted living, and adult residential care
- adult protective services

- Nursing Home Medicaid Payment Administration

These residential and community services programs provide services to approximately 38,000 individuals. Nursing home services alone make up for 14,704 of the individuals served while the remaining 22,900 persons are provided community services. The division is responsible for overseeing a total of approximately 52,600 long-term care beds in the state.

Mental Health Services. Mental Health Services develops, manages, supports, and evaluates an integrated comprehensive system of mental health services for mentally ill persons in Washington. Services administered by this division include:

- community mental health centers
- adult residential care treatment facilities
- involuntary investigation and treatment services
- children's long-term residential treatment
- combined specialized foster care and mental health treatment
- early intervention services
- institutional services at Eastern State Hospital and Western State Hospital

The majority of direct services are managed and provided through regional support networks in local communities.

Developmental Disabilities Services. Developmental Disabilities Services provides a range of services that are designed to care for, habilitate, and case manage persons with developmental disabilities . About one in every 161 persons in Washington State is severely developmentally disabled and requires some form of long-term care service. For a person to be eligible for state supported services, their developmental disability must be attributable to mental retardation, cerebral palsy, epilepsy, autism, or any condition that is closely related to mental retardation. The services provided by the division include:

- case management
- residential habilitation centers
- family support
- county contracted services
- group homes
- tenant support
- alternative living
- Community Institutes for the Mentally Retarded (IMRs)

The total number of persons served by the department is approximately 26,000.

Overlap in Service Delivery. Both boarding homes and adult family homes provide services to individuals whose services are administered in different divisions. In the case of boarding homes the administration is in a different department. In any one of these facilities as many as three administrative divisions, and two departments in the case of boarding homes, could have monitoring oversight specific to the clients they administer.

There are 2,200 adult family homes who have a total of approximately 10,200 beds statewide. The range of services and the types of residents vary greatly among the adult family homes across the state. Adult family homes are licensed and monitored by the Department of Social and Health Services. The number of adult family homes is growing by 30-50 beds a month. In this setting, 1,423 of the homes serve one or more persons with Alzheimer's disease, 1,030 of the homes serve one or more persons with developmental disabilities, 858 homes provide residential care for one or more persons with mental illness, and 820 homes provide respite care for persons living in the community. Boarding homes have a population diversity similar to adult family homes. As of January 1, 1997, there were 408 boarding homes with a 16,441 bed capacity. The elderly population make up 63.6 percent of the residents of boarding homes while developmental disabled persons are 8.1 percent, persons with dementia 14.6 percent, and persons with mental illness are 11.9 percent of the boarding home population. The Department of Health is responsible for licensing and monitoring boarding homes based on standards for construction, environmental safety, and resident personal health care and rights, while the Department of Social and Health Services is responsible for determining the services, payment for the services and client eligibility.

Regulatory Issues. In 1994, the legislation was enacted that significantly expanded the rights of residents in boarding homes and adult family homes. The legislation directed the Washington State Long-term Care Ombudsman, which is a non-governmental organization, to report on the implementation of the law. The ombudsman did a subsequent follow-up study. The latest study of boarding homes and adult family homes by the state Long-term Care Ombudsman indicated that the Department of Health has not been able to maintain the type of regulatory program for boarding homes that is needed. The study recommended that the regulatory functions within the Department of Health be transferred to the Department of Social and Health Services. The Department of Health has been conducting its regulatory duties with limited staff and resources in comparison with other long-term care regulators such as those for nursing homes and adult family homes. The study also made recommendations on increasing the regulatory practices of these facilities and consumer and other protections for long-term care residents.

Summary:

Joint Committee on Long-term Care Reorganization, Reform and Quality Standards.

A joint legislative committee is established, consisting of four members of the House of Representatives and four members of the Senate. The joint committee is mandated to

- 1) review the need for reorganization and reform of long-term care;
- 2) review the quality standards developed;
- 3) initiate or review relevant studies on long-term care;
- 4) review and eliminate unnecessary rules and paperwork;
- 5) suggest cost efficiencies;
- 6) list all non-means tested programs and activities funded by state and federal government;
- 7) suggest methods for a single point of entry for service eligibility;
- 8) evaluate long-term care training;
- 9) describe current facilities, services, eligibility requirements, staffing, and physical plant requirements for all long-term care services;
- 10) determine the appropriateness and efficacy of long-term care services;
- 11) assess the adequacy of the long-term care discharge and referral process;
- 12) determine the adequacy of long-term care supervision and training;
- 13) identify opportunities for consolidation between categories of care; and
- 14) determine if payment rates are adequate to cover varying client needs.

Quality Standards and Complaint Enforcement. *Whistle Blower Provisions:* Whistle blower provisions are established for persons who experience workplace reprisal or retaliatory action as a result of communication with government agencies about suspected abuse, neglect, financial exploitation, or abandonment. The provisions apply to employees in a nursing home, adult family home, state hospital, or boarding home. Measures for confidentiality are established. The whistle blower protections do not prevent the termination or suspension of employees for other lawful purposes. In addition, a facility with fewer than six residents may also terminate employees if the facility can demonstrate to the Department of Social and Health Services that they are unable to meet payroll. The department is given rulemaking authority to implement the whistle blower complaints.

Long-term Care Ombudsmen: The Department of Social and Health Services is required to talk to residents and their representatives during inspections. All licensed facilities must be covered by the ombudsman enforcement remedies and the department must provide standards to providers in a form that is easy to understand.

Complaint Investigation Protocols: The Department of Social and Health Services is mandated to enhance its complaint investigation protocols by requiring the following:

- the department must conduct a preliminary review of the complaint;
- the department must assess the severity and assign an appropriate response time;

- complaints involving imminent danger to the health and safety of a resident must be investigated on-site and within two days;
- the complainant must be promptly contacted by the department and informed of the right to meet the inspectors at the site of the alleged violations, the proposed course of action, and the right to a written report;
- the department must interview the complainant, unless anonymous, and the resident, when possible, in addition to the facility staff, and family members;
- technical assistance must be provided by the department when appropriate;
- sanctions must be implemented against facilities and individuals for complaints involving harm to a resident; and
- facilities must report substantiated complaints of neglect, abuse, exploitation, or abandonment of residents to the appropriate law enforcement agencies, the attorney general, and appropriate disciplinary boards.

Measures are outlined to protect confidentiality of the witness, resident, provider, officer, agent of the department, and employee involved in the allegations. Protections are established for the ombudsman and the resident involved in the complaint.

The department is directed to use a scope and severity scale when imposing any sanctions. The same protections are extended to residents of other long-term care facilities. Facility interference with the duties of the ombudsman is prohibited. Adult family homes are given the same due process protections as boarding homes.

Facility Standards: A long-term care facility is required to admit and maintain only those individuals whose needs the facility can safely and appropriately serve to the best of its ability. Persons who are eligible for Medicaid must receive a comprehensive assessment consisting of their medical history, necessary and prohibited medications, diagnosis, significant known behaviors or symptoms that may cause concern, or require special care, mental illness, activities and services preferences, and level of personal care needs.

Facilities are required to clearly inform residents at least every two years about the services, items, and activities that are customarily available in the facility or arranged by the facility and the charges for those services, items and activities. Items and activities not covered by the facility's per diem rate must also be reported every two years. Residents must be informed 30 days in advance in writing before any changes in the availability or charges of services, items, or activities or changes in the facility's rules. Exceptions may be made for unusual circumstances and for facilities that have six or fewer residents.

Long-term care facilities are required to fully disclose to potential residents who are Medicaid eligible, the service capabilities of the facility prior to the admission to the facility.

Consumer Protection: The Department of Social and Health Services is required to identify other care options for Medicaid residents with care needs higher than the licensed capabilities of the facility. Facilities must first try to reasonably accommodate the care needs of an individual before the individual is transferred or discharged.

Facilities that require an advance notice before a resident is transferred from the facility, or require a minimum stay fee, are required to disclose in writing, using clear language that the resident can understand, a statement of prepaid charges. In addition, facilities are required to disclose in writing prepaid charges that will be refunded to the resident if the resident leaves. If the facility does not comply with the required notice, the deposits, admissions fees, prepaid charges, or minimum stay fees may not be kept by the facility. Facilities are allowed to retain an additional amount of a deposit to cover reasonable and actual expenses resulting from a resident's move. However, these charges are not to exceed five days' per diem charges.

Prohibition Against Signing a Waiver of Rights: All long-term care facilities are prohibited from requiring or requesting that residents sign a waiver of potential liability for losses of personal property or injury.

Enhanced Residential Care: Facilities that choose to provide enhanced residential care may be exempted by the Department of Social and Health Services to make structural modifications to existing building construction. The Department of Social and Health Services is required to make a reasonable effort to contract for at least 180 state clients in enhanced adult residential care by June 30, 1999. In these contracts the payment rate may not be less than 35 percent or greater than 40 percent of the average nursing home medicaid payment rate.

Hospital Discharge Long-term Care Screening: Hospitals are given the opportunity to voluntarily choose to work together with the Department of Social and Health Services in assisting patients to find long-term care services. Standards are established for hospitals that voluntarily choose to not work with the department to conduct long-term care discharge planning.

Quality Improvement Inspections: The Department of Social and Health Services is required to interview an appropriate percentage of residents, family members, residents managers, and advocates, in addition to providers and staff, when conducting licensing inspections. Providers must receive a clear set of health, quality of care, and safety standards from the department, and be given the opportunity to improve quality by first having their problems addressed by training and consultation.

Enforcement Standards: If a facility is found to have delivered care that seriously endangered the safety, health, or well-being of residents, or if a facility's failure to

deliver care resulted in the endangerment of the resident's safety, health, or well-being, the facility must be subject to prompt and specific enforcement including reasonable conditions on the facility's license or contract.

Background Screening: The Department of Social and Health Services is encouraged to provide timely screening of employees for criminal histories, skills, level of training, and education. Employees may be hired provisionally pending the results of their background checks.

Staff or providers of long-term care who have unsupervised access to vulnerable persons and who have a final order or finding of fact issued by a court of law or a disciplining authority for abuse, neglect, exploitation, or abandonments of a minor or vulnerable adult are prohibited from working with vulnerable adults.

Upon the request of an entity that provides services to vulnerable adults and children, the Washington State Patrol is required to disclose the criminal history record for any applicant for employment who provides services to vulnerable populations.

The requirement for a background check when hiring an employee or engaging a volunteer is clarified and expanded to also cover national conviction background checks, at the point in time when background checks are required by state law. Whenever a state or national convictions record check is required by state law, an individual, or a business or organization is allowed to hire an individual pending a completed state or federal background check.

The types of applicants for employment or licensure for whom a criminal history investigation is required are expanded to cover applicants for work in adult family homes, boarding homes, veterans' homes, nursing pools, all developmental disability services, and licensed home health, hospice, and home care agencies. Expanded coverage includes both facilities licensed by the Department of Social and Health Services and additional services contracted by the department.

If an individual who participates in the individual provider program chooses to hire or retain an employee to provide care for the individual and the employee has a conviction that would disqualify the employee from employment with the Department of Social and Health Services, the department may deny payment for the services. Denial of payment does not apply until the client has been notified by the department that the provider has a disqualifying conviction.

A nursing pool is required to conduct or cause to be conducted, background checks on all employees and independent contractors associated with the agency before providing services to vulnerable persons on behalf of the nursing pool agency. Long-term care facilities and services are included on the list of health care facilities and agencies that are required to use only those employees from a nursing pool who have

had a criminal background check. The Department of Health is required to develop additional requirements for licensing and relicensing nursing pools consistent with the new requirements for background checks.

The state's liability is limited for any lawful release of criminal background information.

Nursing homes, boarding homes, and adult family homes are allowed to share criminal background inquiry information results on past employees, if terminated within one year and if the information is no more than two years old. Health care facilities are prohibited from relying on a previous criminal background check if the prospective employer knows or has reason to believe that the applicant has subsequently been convicted of a disqualifying crime or has had a disciplinary board finding or nurse aide registry finding entered. Privacy right protections are established.

Ombudsman Toll Free Number Program: The long-term care ombudsman toll free number program is expanded to include the posting of the department's toll free number at all facilities that provide services by license or contract to the Department of Social and Health Services. This includes group homes, boarding homes, and other facilities not currently required to post the ombudsman toll free number.

Long-term Care Training: The Department of Social and Health Services is required to promote the development of a training system for long-term care that is based on modules and is relevant to the needs of residents, providers, and staff. The department must also improve access to training. Within existing funds, the department must develop training that qualifies towards the requirement for a nursing assistant certificate.

Quality Standards Committee: The Department of Social and Health Services is directed to establish a quality improvement standards committee within existing funds.

Estate Recovery/ Consumer Protection/ Disclosure. *Reimbursement for Long-Term Care:* The Department of Social and Health Services is mandated to seek reimbursement for nursing home care or at-home services provided prior to October 1, 1993, from the estate of a deceased recipient. The department is authorized to file liens to secure the state's interest in real property. The use of community property agreements as a way to avoid debt owed the state for long-term care costs is eliminated. Adult protective services costs are exempted from recovery. The Office of Financial Management is required to review the cost and feasibility of the Department of Social and Health Services collecting the client co-payment for long-term care and the cost to community providers under the current system for collecting the client co-payment in addition to the amount charged to the client for estate

recovery. The Office of Financial Management is required to report to the Legislature by December 12, 1997.

Consumer Protection/Disclosure: The Department of Social and Health Services must fully disclose the terms and conditions of estate recovery. By November 15, 1997, the department must report to the Legislature on the costs of identifying direct and indirect costs associated with the individual provider program.

Adult Family Homes. *Adult Family Home Limited Moratorium:* A limited moratorium on the authorization of adult family home licenses is established. A determination of when it is safe to remove the moratorium may occur if all quality standards have been reviewed by the secretary of the Department of Social and Health Services and deemed sufficient to protect the safety and health of residents and the adult family home owners and operators have been notified of the standards. The moratorium is lifted in December 1997, or at a date determined by the secretary.

The department may conduct a review of the cost and feasibility of creating an Adult Family Home Advisory Committee.

Utility Rates: Adult family homes are considered a family residence for the purpose of utility rates.

Miscellaneous Provisions. *Pilot Plan for Implementing Accreditation Program for Boarding Homes:* The Department of Social and Health Services and the Department of Health may develop a plan for implementing a pilot program for accrediting boarding homes with a recognized non-governmental accreditation organization. If funded, the pilot plan must be presented to the Legislature by January 5, 1998.

Ombudsman Study: The Department of Community, Trade and Economic Development may conduct a study and make recommendations to implement a single umbrella ombudsman organization to assist persons with developmental disabilities, older Americans, and mentally ill persons. If the study is funded the department is required to report to the appropriate committees of the House of Representatives and the Senate by January 10, 1998.

Certification Standards for Community Residential Alternatives: The Department of Social and Health Services may review the cost and feasibility of implementing developmental disabilities certification standards for community residential alternatives such as group homes, alternative living, intensive and other tenant support services, adult family homes, or boarding homes. The areas to be reviewed for certification standards are outlined. If the review is funded, the department is required to report to appropriate committees of the House of Representatives and the Senate by January 30, 1998.

Criminal Mistreatment of Vulnerable Adults: A resident of a nursing home, an adult family home, or a frail elder or vulnerable adult is presumed to be a dependent person for purposes of the criminal mistreatment statutes.

The existing crimes of criminal mistreatment in the first and second degree are defined to also apply to a person employed to provide a child or dependent person the basic necessities of life where a risk of bodily harm or actual harm is caused by the reckless withholding of those necessities.

A person is guilty of rape in the second degree when the person engages in sexual intercourse with a frail elder or vulnerable adult where the person has a significant relationship with the victim and is not married to them. A person is guilty of indecent liberties when the person knowingly causes a frail elder or vulnerable adult to have sexual contact where the person has a significant relationship with the victim and is not married to them. A significant relationship is defined to include a person who professionally or voluntarily provides assistance, personal care or organized recreational activities to frail elders or vulnerable adults. The definition of a significant relationship does not include a consensual sexual partner.

A person associated with a licensed agency or facility that provides care or treatment of vulnerable adults and who has direct contact with vulnerable adults is required to truthfully disclose his or her criminal background history or be liable for perjury.

The penalty for failing to report known incidents of abuse or neglect at nursing homes and state mental hospitals to law enforcement officials or the Department of Social and Health Services is increased from a misdemeanor to a gross misdemeanor.

Nursing Home Resident Protection Program: The Department of Health in cooperation with the Department of Social and Health Services is required to develop a nursing home resident protection program. The program is required to meet all federal requirements without interfering with actions taken against health professionals under the Uniform Disciplinary Act.

Votes on Final Passage:

House 97 0
Senate 41 0 (Senate amended)
House (Refused to concur)

First Conference Committee

Senate (Senate refused to adopt)

Second Conference Committee

Senate (Senate refused to adopt)

Senate 48 0 (Senate adopted)
House 97 1

Effective: May 16, 1997 (Section 403)
July 27, 1997

Partial Veto Summary: The governor vetoed the joint legislative oversight committee that was mandated to review long-term care reforms, the mandatory assessment of all potential residents of long-term care facilities, the requirement that DSHS make a reasonable effort to contract for at least 180 nursing home clients in enhanced residential care settings at a specified new rate, the ability for hospitals to choose to participate in the currently mandatory DSHS long-term care discharge planning process, the requirement that the DSHS report to all clients the current expenses incurred for the use of services for the purpose of consumer disclosure on estate recovery, the pilot program for accrediting boarding homes through a private accreditation organization, and the modified Resident Protection Program coordinated between the Department of Health and the DSHS.