
SUBSTITUTE SENATE BILL 6160

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Parlette, Keiser and Pflug)

READ FIRST TIME 02/09/04.

1 AN ACT Relating to fairness and accuracy in the distribution of
2 risk; amending RCW 18.20.125, 74.39A.050, and 18.20.110; adding new
3 sections to chapter 18.20 RCW; adding a new section to chapter 74.42
4 RCW; creating a new section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the inspection,
7 reinspection, and complaint investigation process for licensed boarding
8 homes and nursing homes should facilitate open and candid communication
9 between licensors, providers, and residents or their legal
10 representatives. The legislature further finds such communication and
11 quality assurance efforts will promote compliance with regulations by
12 providers and achieve the goal of providing high quality of care to
13 citizens residing in licensed boarding homes and nursing homes, and may
14 reduce property and liability insurance premium costs for such
15 facilities.

16 **Sec. 2.** RCW 18.20.125 and 2003 c 231 s 5 are each amended to read
17 as follows:

18 (1) Inspections, including reinspections, complaint investigations,

1 and inspections under RCW 74.39A.050, must be outcome based and
2 responsive to resident complaints and based on a clear set of health,
3 quality of care, and safety standards that are easily understandable
4 and have been made available to facilities. This includes that when
5 conducting licensing inspections, reinspections, complaint
6 investigations, and inspections under RCW 74.39A.050, the department
7 shall interview an appropriate percentage of residents, family members,
8 and advocates in addition to interviewing appropriate staff. The
9 department must give the administrator or the administrator's designee
10 a written statement of deficiencies identifying any violations of
11 statute or regulation, including any subsection of the statute or
12 regulation, if any, the facts that determine the violation, and the
13 impact or the potential impact or outcome, if any, of the violation
14 that the department found during an inspection, reinspection, or
15 complaint investigation.

16 (2) During the on-site licensing inspection process, including
17 complaint and reinspections, the department personnel conducting the
18 inspection or investigation shall schedule a daily communication
19 meeting with the facility administrator or their designee, to the
20 fullest extent reasonably possible, during any inspection that lasts
21 more than one day, and provide periodic reports, at least daily, of
22 potential problems to the facility administrator or a designee, and the
23 facility administrator or designee shall be given the earliest possible
24 opportunity to provide information related to these concerns for
25 consideration by the licensors. At the conclusion of the inspection or
26 investigation, the licensors shall hold an exit conference whenever
27 possible to conduct a face-to-face review of all possible problems
28 found during the inspection. Failure to hold daily communications or
29 an exit conference is not grounds for nullifying or voiding any
30 citation, statement of deficiencies, or enforcement remedies imposed by
31 the department. The facility shall have the opportunity to submit
32 additional or supplemental information related to the concerns
33 discussed at the time of the exit conference for consideration by the
34 licensors. If the department obtains additional information that may
35 substantially alter the preliminary conclusions or issues identified
36 during the exit conference, the department shall attempt to notify the
37 facility administrator or their designee of the additional issues or

1 amended conclusions, and provide the facility administrator or their
2 designee the earliest possible opportunity to respond to the additional
3 information to be considered by the licensors.

4 (3) Prompt and specific enforcement remedies shall also be
5 implemented without delay, consistent with RCW 18.20.190, for
6 facilities found to have delivered care or failed to deliver care
7 resulting in problems that are serious, recurring, or uncorrected, or
8 that create a hazard that is causing or likely to cause death or
9 serious harm to one or more residents. These enforcement remedies may
10 also include, when appropriate, reasonable conditions on a license. In
11 the selection of remedies, the safety, health, and well-being of
12 residents shall be of paramount importance.

13 ((+3)) (4) To the extent funding is available, the licensee,
14 administrator, and their staff should be screened through background
15 checks in a uniform and timely manner to ensure that they do not have
16 a criminal history that would disqualify them from working with
17 vulnerable adults. Employees may be provisionally hired pending the
18 results of the background check if they have been given three positive
19 references.

20 ((+4)) (5) No licensee, administrator, or staff, or prospective
21 licensee, administrator, or staff, with a stipulated finding of fact,
22 conclusion of law, and agreed order, or finding of fact, conclusion of
23 law, or final order issued by a disciplining authority, a court of law,
24 or entered into the state registry finding him or her guilty of abuse,
25 neglect, exploitation, or abandonment of a minor or a vulnerable adult
26 as defined in chapter 74.34 RCW shall be employed in the care of and
27 have unsupervised access to vulnerable adults.

28 **Sec. 3.** RCW 74.39A.050 and 2000 c 121 s 10 are each amended to
29 read as follows:

30 The department's system of quality improvement for long-term care
31 services shall use the following principles, consistent with applicable
32 federal laws and regulations:

33 (1) The system shall be client-centered and promote privacy,
34 independence, dignity, choice, and a home or home-like environment for
35 consumers consistent with chapter 392, Laws of 1997.

36 (2) The goal of the system is continuous quality improvement with
37 the focus on consumer satisfaction and outcomes for consumers. Except

1 as provided in RCW 18.20.125, this includes that when conducting
2 licensing inspections, the department shall interview an appropriate
3 percentage of residents, family members, resident managers, and
4 advocates in addition to interviewing providers and staff.

5 (3) Providers should be supported in their efforts to improve
6 quality and address identified problems initially through training,
7 consultation, technical assistance, and case management.

8 (4) The emphasis should be on problem prevention both in monitoring
9 and in screening potential providers of service.

10 (5) Except as provided in RCW 18.20.125, monitoring should be
11 outcome based and responsive to consumer complaints and a clear set of
12 health, quality of care, and safety standards that are easily
13 understandable and have been made available to providers.

14 (6) Prompt and specific enforcement remedies shall also be
15 implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160,
16 chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have
17 delivered care or failed to deliver care resulting in problems that are
18 serious, recurring, or uncorrected, or that create a hazard that is
19 causing or likely to cause death or serious harm to one or more
20 residents. These enforcement remedies may also include, when
21 appropriate, reasonable conditions on a contract or license. In the
22 selection of remedies, the safety, health, and well-being of residents
23 shall be of paramount importance.

24 (7) To the extent funding is available, all long-term care staff
25 directly responsible for the care, supervision, or treatment of
26 vulnerable persons should be screened through background checks in a
27 uniform and timely manner to ensure that they do not have a criminal
28 history that would disqualify them from working with vulnerable
29 persons. Whenever a state conviction record check is required by state
30 law, persons may be employed or engaged as volunteers or independent
31 contractors on a conditional basis according to law and rules adopted
32 by the department.

33 (8) No provider or staff, or prospective provider or staff, with a
34 stipulated finding of fact, conclusion of law, an agreed order, or
35 finding of fact, conclusion of law, or final order issued by a
36 disciplining authority, a court of law, or entered into a state
37 registry finding him or her guilty of abuse, neglect, exploitation, or

1 abandonment of a minor or a vulnerable adult as defined in chapter
2 74.34 RCW shall be employed in the care of and have unsupervised access
3 to vulnerable adults.

4 (9) The department shall establish, by rule, a state registry which
5 contains identifying information about personal care aides identified
6 under this chapter who have substantiated findings of abuse, neglect,
7 financial exploitation, or abandonment of a vulnerable adult as defined
8 in RCW 74.34.020. The rule must include disclosure, disposition of
9 findings, notification, findings of fact, appeal rights, and fair
10 hearing requirements. The department shall disclose, upon request,
11 substantiated findings of abuse, neglect, financial exploitation, or
12 abandonment to any person so requesting this information.

13 (10) The department shall by rule develop training requirements for
14 individual providers and home care agency providers. Effective March
15 1, 2002, individual providers and home care agency providers must
16 satisfactorily complete department-approved orientation, basic
17 training, and continuing education within the time period specified by
18 the department in rule. The department shall adopt rules by March 1,
19 2002, for the implementation of this section based on the
20 recommendations of the community long-term care training and education
21 steering committee established in RCW 74.39A.190. The department shall
22 deny payment to an individual provider or a home care provider who does
23 not complete the training requirements within the time limit specified
24 by the department by rule.

25 (11) In an effort to improve access to training and education and
26 reduce costs, especially for rural communities, the coordinated system
27 of long-term care training and education must include the use of
28 innovative types of learning strategies such as internet resources,
29 videotapes, and distance learning using satellite technology
30 coordinated through community colleges or other entities, as defined by
31 the department.

32 (12) The department shall create an approval system by March 1,
33 2002, for those seeking to conduct department-approved training. In
34 the rule-making process, the department shall adopt rules based on the
35 recommendations of the community long-term care training and education
36 steering committee established in RCW 74.39A.190.

37 (13) The department shall establish, by rule, training, background
38 checks, and other quality assurance requirements for personal aides who

1 provide in-home services funded by medicaid personal care as described
2 in RCW 74.09.520, community options program entry system waiver
3 services as described in RCW 74.39A.030, or chore services as described
4 in RCW 74.39A.110 that are equivalent to requirements for individual
5 providers.

6 (14) Under existing funds the department shall establish internally
7 a quality improvement standards committee to monitor the development of
8 standards and to suggest modifications.

9 (15) Within existing funds, the department shall design, develop,
10 and implement a long-term care training program that is flexible,
11 relevant, and qualifies towards the requirements for a nursing
12 assistant certificate as established under chapter 18.88A RCW. This
13 subsection does not require completion of the nursing assistant
14 certificate training program by providers or their staff. The long-
15 term care teaching curriculum must consist of a fundamental module, or
16 modules, and a range of other available relevant training modules that
17 provide the caregiver with appropriate options that assist in meeting
18 the resident's care needs. Some of the training modules may include,
19 but are not limited to, specific training on the special care needs of
20 persons with developmental disabilities, dementia, mental illness, and
21 the care needs of the elderly. No less than one training module must
22 be dedicated to workplace violence prevention. The nursing care
23 quality assurance commission shall work together with the department to
24 develop the curriculum modules. The nursing care quality assurance
25 commission shall direct the nursing assistant training programs to
26 accept some or all of the skills and competencies from the curriculum
27 modules towards meeting the requirements for a nursing assistant
28 certificate as defined in chapter 18.88A RCW. A process may be
29 developed to test persons completing modules from a caregiver's class
30 to verify that they have the transferable skills and competencies for
31 entry into a nursing assistant training program. The department may
32 review whether facilities can develop their own related long-term care
33 training programs. The department may develop a review process for
34 determining what previous experience and training may be used to waive
35 some or all of the mandatory training. The department of social and
36 health services and the nursing care quality assurance commission shall
37 work together to develop an implementation plan by December 12, 1998.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.42 RCW
2 to read as follows:

3 (1) To ensure the proper delivery of services and the maintenance
4 and improvement in quality of care through self-review, each nursing
5 home must maintain a quality assurance committee that, at a minimum,
6 includes:

- 7 (a) The director of nursing services;
- 8 (b) A physician designated by the facility; and
- 9 (c) Three other members from the staff of the nursing home.

10 (2) When established, the quality assurance committee shall meet at
11 least quarterly to identify issues that may adversely affect quality of
12 care and services to residents and to develop and implement plans of
13 action to correct identified quality concerns or deficiencies in the
14 quality of care provided to residents.

15 (3) To promote quality of care through self-review without the fear
16 of reprisal, and to enhance the objectivity of the review process, the
17 department shall not require, and the long-term care ombudsman program
18 shall not request, disclosure of any quality assurance committee
19 records or reports, unless the disclosure is related to the committee's
20 compliance with this section, if:

- 21 (a) The records or reports are not maintained pursuant to statutory
22 or regulatory mandate; and
- 23 (b) The records or reports are created for and collected and
24 maintained by the committee.

25 (4) The department may request only information related to the
26 quality assurance committee that may be necessary to determine whether
27 a nursing home has a quality assurance committee and that it is
28 operating in compliance with this section.

29 (5) Good faith attempts by the committee to identify and correct
30 quality deficiencies shall not be used as a basis for imposing
31 sanctions.

32 (6) If the nursing home offers the department documents generated
33 by, or for, the quality assurance committee as evidence of compliance
34 with nursing home requirements, the documents are not protected as
35 quality assurance committee documents when in the possession of the
36 department.

37 (7) Any records that are created for and collected and maintained

1 by the quality assurance committee shall not be discoverable or
2 admitted into evidence in a civil action brought against a nursing
3 home.

4 (8) Notwithstanding any records created for the quality assurance
5 committee, the facility shall fully set forth in the resident's
6 records, available to the resident, the department, and others as
7 permitted by law, the facts concerning any incident of injury or loss
8 to the resident, the steps taken by the facility to address the
9 resident's needs, and the resident outcome.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 18.20 RCW
11 to read as follows:

12 (1) To ensure the proper delivery of services and the maintenance
13 and improvement in quality of care through self-review, any boarding
14 home licensed under this chapter may maintain a quality assurance
15 committee that, at a minimum, includes:

- 16 (a) A licensed registered nurse under chapter 18.79 RCW;
- 17 (b) The administrator; and
- 18 (c) Three other members from the staff of the boarding home.

19 (2) When established, the quality assurance committee shall meet at
20 least quarterly to identify issues that may adversely affect quality of
21 care and services to residents and to develop and implement plans of
22 action to correct identified quality concerns or deficiencies in the
23 quality of care provided to residents.

24 (3) To promote quality of care through self-review without the fear
25 of reprisal, and to enhance the objectivity of the review process, the
26 department shall not require, and the long-term care ombudsman program
27 shall not request, disclosure of any quality assurance committee
28 records or reports, unless the disclosure is related to the committee's
29 compliance with this section, if:

- 30 (a) The records or reports are not maintained pursuant to statutory
31 or regulatory mandate; and
- 32 (b) The records or reports are created for and collected and
33 maintained by the committee.

34 (4) If the boarding home refuses to release records or reports that
35 would otherwise be protected under this section, the department may
36 then request only that information that is necessary to determine

1 whether the boarding home has a quality assurance committee and to
2 determine that it is operating in compliance with this section.

3 (5) Good faith attempts by the committee to identify and correct
4 quality deficiencies shall not be used as a basis for sanctions.

5 (6) Any records that are created for and collected and maintained
6 by the quality assurance committee shall not be discoverable or
7 admitted into evidence in a civil action brought against a boarding
8 home.

9 (7) Notwithstanding any records created for the quality assurance
10 committee, the facility shall fully set forth in the resident's
11 records, available to the resident, the department, and others as
12 permitted by law, the facts concerning any incident of injury or loss
13 to the resident, the steps taken by the facility to address the
14 resident's needs, and the resident outcome.

15 **Sec. 6.** RCW 18.20.110 and 2003 c 280 s 1 are each amended to read
16 as follows:

17 The department shall make or cause to be made, at least every
18 eighteen months with an annual average of fifteen months, an inspection
19 and investigation of all boarding homes. However, the department may
20 delay an inspection to twenty-four months if the boarding home has had
21 three consecutive inspections with no written notice of violations and
22 has received no written notice of violations resulting from complaint
23 investigation during that same time period. The department may at
24 anytime make an unannounced inspection of a licensed home to assure
25 that the licensee is in compliance with this chapter and the rules
26 adopted under this chapter. Every inspection shall focus primarily on
27 actual or potential resident outcomes, and may include an inspection of
28 every part of the premises and an examination of all records (~~((other~~
29 ~~than financial records))~~), methods of administration, the general and
30 special dietary, and the stores and methods of supply; however, the
31 department shall not have access to financial records or to other
32 records or reports pursuant to section 4 of this act. Financial
33 records of the boarding home may be examined when the department has
34 reasonable cause to believe that financial obligations related to
35 resident care or services will not be met, such as a complaint that
36 staff wages or utility costs have not been paid, or when necessary for
37 the department to investigate alleged financial exploitation of a

1 resident. Following such an inspection or inspections, written notice
2 of any violation of this law or the rules adopted hereunder shall be
3 given to the applicant or licensee and the department. The department
4 may prescribe by rule that any licensee or applicant desiring to make
5 specified types of alterations or additions to its facilities or to
6 construct new facilities shall, before commencing such alteration,
7 addition, or new construction, submit plans and specifications therefor
8 to the agencies responsible for plan reviews for preliminary inspection
9 and approval or recommendations with respect to compliance with the
10 rules and standards herein authorized.

11 NEW SECTION. Sec. 7. A new section is added to chapter 18.20 RCW
12 to read as follows:

13 If during an inspection or reinspection by the department, a
14 boarding home corrects a violation or deficiency that either the
15 boarding home or the department discovers, the licensor or complaint
16 investigator shall not include in the facility report the violation or
17 deficiency if the violation or deficiency:

18 (1) Is corrected to the satisfaction of the department prior to the
19 exit conference;

20 (2) Is not recurring; and

21 (3) Did not pose a significant risk of harm or actual harm to a
22 resident.

23 For the purposes of this section, "recurring" means that the
24 violation or deficiency was found under the same regulation or statute
25 in one of the two most recent preceding inspections or reinspections.

26 NEW SECTION. Sec. 8. This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of the
28 state government and its existing public institutions, and takes effect
29 immediately.

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