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SENATE BILL 5640

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State of Washington

61st Legislature

2009 Regular Session

By Senators Murray, Schoesler, Delvin, and Kohl-Welles

Read first time 01/28/09. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to intermediate care facilities for persons with  
2 developmental disabilities; and amending RCW 70.129.005, 70.129.010,  
3 70.129.105, 70.129.110, 70.129.160, and 70.129.170.

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

5 **Sec. 1.** RCW 70.129.005 and 1994 c 214 s 1 are each amended to read  
6 as follows:

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

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

18 The legislature finds that the public interest would be best served  
19 by providing the same basic resident rights in all long-term care

1 settings. Residents in nursing facilities are guaranteed certain  
2 rights by federal law and regulation, 42 U.S.C. 1396r and 42 C.F.R.  
3 part 483. It is the intent of the legislature to extend those basic  
4 rights to residents in veterans' homes, boarding homes, ~~((and))~~ adult  
5 family homes, and intermediate care facilities for persons with  
6 developmental disabilities.

7 The legislature intends that a facility should care for its  
8 residents in a manner and in an environment that promotes maintenance  
9 or enhancement of each resident's quality of life. A resident should  
10 have a safe, clean, comfortable, and homelike environment, allowing the  
11 resident to use his or her personal belongings to the extent possible.

12 **Sec. 2.** RCW 70.129.010 and 1997 c 392 s 203 are each amended to  
13 read as follows:

14 Unless the context clearly requires otherwise, the definitions in  
15 this section apply throughout this chapter.

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

18 (2) "Facility" means a long-term care facility or an intermediate  
19 care facility.

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

22 (4) "Intermediate care facility" or "intermediate care facility for  
23 persons with developmental disabilities" means a facility described in  
24 federal law as an intermediate care facility for the mentally retarded  
25 that is certified by the department of social and health services or by  
26 the federal department of health and human services to provide  
27 residential care under 42 U.S.C. Sec. 1396d(d).

28 (5) "Resident" means the individual receiving services in a long-  
29 term care facility or an intermediate care facility for persons with  
30 developmental disabilities, that resident's attorney-in-fact, guardian,  
31 or other legal representative acting within the scope of their  
32 authority.

33 ~~((+5))~~ (6) "Physical restraint" means a manual method, obstacle,  
34 or physical or mechanical device, material, or equipment attached or  
35 adjacent to the resident's body that restricts freedom of movement or  
36 access to his or her body, is used for discipline or convenience, and  
37 not required to treat the resident's medical symptoms.

1           ((+6+)) (7) "Chemical restraint" means a psychopharmacologic drug  
2 that is used for discipline or convenience and not required to treat  
3 the resident's medical symptoms.

4           ((+7+)) (8) "Representative" means a person appointed under RCW  
5 7.70.065.

6           ((+8+)) (9) "Reasonable accommodation" by a facility to the needs  
7 of a prospective or current resident has the meaning given to this term  
8 under the federal Americans with disabilities act of 1990, 42 U.S.C.  
9 Sec. 12101 et seq. and other applicable federal or state  
10 antidiscrimination laws and regulations.

11           **Sec. 3.** RCW 70.129.105 and 1997 c 392 s 211 are each amended to  
12 read as follows:

13           No long-term care facility (~~(or)~~), nursing facility licensed under  
14 chapter 18.51 RCW, or intermediate care facility for persons with  
15 developmental disabilities shall require or request residents to sign  
16 waivers of potential liability for losses of personal property or  
17 injury, or to sign waivers of residents' rights set forth in this  
18 chapter or in the applicable licensing or certification laws.

19           **Sec. 4.** RCW 70.129.110 and 1997 c 392 s 205 are each amended to  
20 read as follows:

21           (1) The facility must permit each resident to remain in the  
22 facility, and not transfer or discharge the resident from the facility  
23 unless:

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

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

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

29           (d) The resident has failed to make the required payment for his or  
30 her stay; or

31           (e) The facility ceases to operate.

32           (2) All long-term care facilities shall fully disclose to potential  
33 residents or their legal representative the service capabilities of the  
34 facility prior to admission to the facility. If the care needs of the  
35 applicant who is medicaid eligible are in excess of the facility's

1 service capabilities, the department shall identify other care settings  
2 or residential care options consistent with federal law.

3 (3) Before a long-term care facility transfers or discharges a  
4 resident, the facility must:

5 (a) First attempt through reasonable accommodations to avoid the  
6 transfer or discharge, unless agreed to by the resident;

7 (b) Notify the resident and representative and make a reasonable  
8 effort to notify, if known, an interested family member of the transfer  
9 or discharge and the reasons for the move in writing and in a language  
10 and manner they understand;

11 (c) Record the reasons in the resident's record; and

12 (d) Include in the notice the items described in subsection (5) of  
13 this section.

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

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

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

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

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

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

25 (5) The written notice specified in subsection (3) of this section  
26 must include the following:

27 (a) The reason for transfer or discharge;

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

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

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

33 (e) For residents with developmental disabilities, the mailing  
34 address and telephone number of the agency responsible for the  
35 protection and advocacy of ~~((developmentally disabled individuals))~~  
36 persons with developmental disabilities established under part C of the  
37 developmental disabilities assistance and bill of rights act; ~~((and))~~

1 (f) For residents who (~~are mentally ill~~) have a mental illness,  
2 the mailing address and telephone number of the agency responsible for  
3 the protection and advocacy of (~~mentally ill individuals~~) persons who  
4 have a mental illness established under the protection and advocacy for  
5 mentally ill individuals act; and

6 (g) For residents of an intermediate care facility for persons with  
7 developmental disabilities, the mailing addresses and telephone numbers  
8 of the resident's representative, if any, and the human rights  
9 committee of that facility established under 42 C.F.R. 483.440.

10 (6) A facility must provide sufficient preparation and orientation  
11 to residents to ensure safe and orderly transfer or discharge from the  
12 facility.

13 (7) A resident discharged in violation of this section has the  
14 right to be readmitted immediately upon the first availability of a  
15 gender-appropriate bed in the facility.

16 **Sec. 5.** RCW 70.129.160 and 1998 c 245 s 113 are each amended to  
17 read as follows:

18 The long-term care ombudsman shall monitor implementation of this  
19 chapter and determine the degree to which veterans' homes, nursing  
20 facilities, adult family homes, (~~and~~) boarding homes, and  
21 intermediate care facilities for persons with developmental  
22 disabilities ensure that residents are able to exercise their rights.  
23 The long-term care ombudsman shall consult with the departments of  
24 health and social and health services, long-term care facility  
25 organizations, the human rights committee of an intermediate care  
26 facility for persons with developmental disabilities, resident groups,  
27 and organizations for senior (~~and disabled~~) citizens  
28 (~~organizations~~) and persons with disabilities.

29 **Sec. 6.** RCW 70.129.170 and 1994 c 214 s 19 are each amended to  
30 read as follows:

31 (1) The legislature intends that long-term care facility or nursing  
32 home residents, their family members or guardians, the long-term care  
33 ombudsman, protection and advocacy personnel, and the human rights  
34 committee identified in RCW 70.129.110(~~(+4)~~) (5) (e) (~~and~~), (f), and  
35 (g), and others who may seek to assist long-term care facility or  
36 nursing home residents, use the least formal means available to

1 satisfactorily resolve disputes that may arise regarding the rights  
2 conferred by the provisions of chapter 70.129 RCW and RCW 18.20.180,  
3 18.51.009, 72.36.037, and 70.128.125. Wherever feasible, direct  
4 discussion with facility personnel or administrators should be  
5 employed. Failing that, and where feasible, recourse may be sought  
6 through state or federal long-term care or nursing home licensing or  
7 other regulatory authorities. (~~However,~~)

8 (2) The procedures suggested in this section are cumulative and  
9 shall not restrict an agency or person from seeking a remedy provided  
10 by law or from obtaining additional relief based on the same facts,  
11 including any remedy available to an individual at common law.

12 (3) Chapter 214, Laws of 1994 is not intended to, and shall not be  
13 construed to, create any right of action on the part of any individual  
14 beyond those in existence under any common law or statutory doctrine.

15 (4) Chapter 214, Laws of 1994 is not intended to, and shall not be  
16 construed to, operate in derogation of any right of action on the part  
17 of any individual in existence on June 9, 1994.

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