

HOUSE BILL REPORT

ESHB 1277

As Passed House:
May 2, 2011

Title: An act relating to oversight of licensed or certified long-term care settings for vulnerable adults.

Brief Description: Concerning oversight of licensed or certified long-term care settings for vulnerable adults.

Sponsors: House Committee on Ways & Means (originally sponsored by Representative Cody; by request of Department of Social and Health Services).

Brief History:

Committee Activity:

Health Care & Wellness: 2/2/11, 2/10/11 [DP];

Ways & Means: 2/24/11, 3/21/11 [DPS].

Floor Activity:

Passed House: 4/6/11, 57-40.

First Special Session

Floor Activity:

Passed House: 5/2/11, 50-45.

Brief Summary of Engrossed Substitute Bill

- Expands licensing requirements for adult family home providers related to financial solvency, caregiving experience, maintaining a "home-like" setting, and responsibility for daily operations.
- Requires that fees for long-term care facilities be established by the Legislature in the State Omnibus Operating Appropriations Act.
- Directs the Department of Social and Health Services to adopt rules for criteria on how to apply sanctions with increasing severity.
- Establishes a nonappropriated account for the deposit of all penalties imposed upon adult family homes to be used to promote quality of life and care for adult family home residents.
- Establishes protections for security deposits and prepayments submitted by residents of adult family homes, including requirements to deposit the funds in interest-bearing accounts, accountability requirements, disclosure requirements, and refund requirements.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 6 members: Representatives Cody, Chair; Jinkins, Vice Chair; Clibborn, Green, Moeller and Van De Wege.

Minority Report: Do not pass. Signed by 5 members: Representatives Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Bailey, Harris and Kelley.

Staff: Chris Blake (786-7392).

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle, Cody, Dickerson, Haigh, Hudgins, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Seaquist, Springer and Sullivan.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Haler, Hinkle, Parker, Ross, Schmick and Wilcox.

Staff: Carma Matti-Jackson (786-7140).

Background:

The Department of Social and Health Services (Department) licenses three primary types of residential long-term care settings: nursing homes (sometimes referred to as skilled nursing facilities), boarding homes, and adult family homes.

Nursing Homes: Nursing homes provide continuous 24-hour convalescent and chronic care. Such care may include the administration of medications, preparation of special diets, bedside nursing care, application of dressings and bandages, and carrying out treatment prescribed by licensed health care providers.

Boarding Homes: Boarding homes are facilities that provide housing and basic services to seven or more residents. Services provided by boarding homes include housekeeping, meals, snacks, laundry, and activities. They may also provide domiciliary care including assistance with activities of daily living, health support services, and intermittent nursing services.

Adult Family Homes: Adult family homes are facilities licensed to care for up to six individuals who need long-term care. These homes provide room, board, laundry, necessary supervision, and assistance with activities of daily living, personal care, and nursing services.

The Department administers the licensing programs for each of the long-term care settings. The Department's licensing functions include processing applications for new providers, performing inspections, complaint investigations, and enforcement if resolution is not met. In some instances, formal dispute resolutions or hearings may be included.

License fees are set as directed in statute and depend on facility type. The Department is directed to set the nursing home license fee in an amount adequate to fully recover the costs of the licensure. The boarding home fee is to be based on costs to administer the program, and the adult family home license fee is set in statute.

Currently, in Washington there are approximately:

- two hundred and twenty licensed skilled nursing facilities that provide services for approximately 9,900 Medicaid eligible clients. The average number of beds per facility is 96 and there are a total 22,788 beds in Washington;
- five hundred and fifty licensed boarding homes that provide services for approximately 6,800 Medicaid eligible clients. About 2 percent of these are clients with developmental disabilities. The average number of beds per facility is 49 and there are a total of 28,926 beds in Washington; and
- two thousand nine hundred licensed adult family homes that provide services for approximately 6,900 Medicaid eligible clients. About 25 percent of these are clients with developmental disabilities. The average home has six beds.

Summary of Engrossed Substitute Bill:

Adult Family Home Licensing Qualifications.

For an adult family home provider to operate multiple homes, at least three years must have passed since the previous license was issued and the Department of Social and Health Services (Department) must not have taken any enforcement actions against the provider in the previous three years. Married couples and state registered domestic partners are prohibited from applying for separate licenses.

Applicants must provide proof of financial solvency and complete a business planning class that includes at least 48 hours of classroom time and has been approved by the Department. The requirement that applicants and resident managers have at least 320 hours of direct caregiving experience is increased to 1,000 hours in the previous five years. An applicant must not have been convicted of a crime related to the abuse, neglect, exploitation, or abandonment of a minor or vulnerable adult. Applicants for additional adult family homes must wait two years from the issuance of the initial license and not have had any enforcement actions taken against them in the two years prior to application. For applicants for additional adult family homes who are beyond the initial licensing period, the applicant must wait one year since the previous adult family home license and not have had any enforcement actions taken against them in the previous year.

Adult family home providers, applicants, and resident managers are required to be able to communicate in English. The provider and resident manager must assure that there are staff available to residents at all times who are able to communicate with the resident in his or her primary language.

Inspections of adult family homes shall be conducted on a 15-month average.

Adult Family Home Practice Requirements.

Adult family home providers are ultimately responsible for the daily operations of each licensed adult family home and for the health, safety, and well-being of each resident in each of their homes. Residents who require physical, mental, or verbal assistance must be kept on the ground floor. Adult family home providers are prohibited from operating a separate business in the home. Homes are required to maintain a "home-like" nature by:

- having sufficient space to accommodate all residents at once in the dining and living room areas;
- providing all residents with access to common areas, including kitchens, dining and living areas, and bathrooms;
- having halls and doors that are wide enough to accommodate mobility aids; and
- having outdoor areas that are safe for residents to use.

Either the adult family home provider or resident manager must live at the home. Employees working in a home pending approval of a background check may not have unsupervised access to any residents. Adult family homes must be solvent and must provide financial information to the Department upon request.

Protections are established for security deposits and prepayments submitted by residents of adult family homes, including requirements to deposit the funds in interest-bearing accounts, accountability requirements, disclosure requirements, and refund requirements. Violation of the resident fund protections are declared to be violations of the Consumer Protection Act.

Sanctions Against Adult Family Homes.

Civil penalties for violations of adult family homes standards are changed from a limit of \$100 per day per violation to at least \$100 per day per violation. The Department is authorized to impose civil penalties up to \$3,000 for each incident that violates adult family home licensing laws. A civil penalty up to \$10,000 may be imposed upon a current or former provider who operates an unlicensed adult family home. Receipts from civil penalties may be used for promoting the quality of life for residents living in adult family homes.

Long-Term Care Facility Fees.

As of July 1, 2011, the per-bed licensing fee for nursing homes and boarding homes shall be established by the Legislature in the State Omnibus Operating Appropriations Act, rather than by the Department. As of July 1, 2011, the \$100 license fee for adult family homes established in statute is replaced by a per-bed fee to be determined by the Legislature in the biennial budget. Licensing fees must not exceed the Department's annual costs for licensing and oversight activities and must include the Department's cost of paying providers for the amount the fee attributed to Medicaid clients.

Other Provisions.

Subject to funding, the Department is directed to use additional investigative resources to decrease the average time between adult family home and boarding home inspections. The Department shall develop a statewide internal quality review and accountability program to improve consistency in investigative activities and outcomes for vulnerable individuals. In addition, the Department shall convene a quality assurance panel to recommend ways to

improve the safety of residents and oversight of adult family homes. The panel must report its recommendations to the Governor and the appropriate committees of the Legislature by December 1, 2012.

It is specified that licenses for boarding homes are only valid for one year. The Department has discretion to deny nursing home, boarding home, and adult family home licenses, even if all licensing standards have been met.

References to the Advisory Committee on Adult Family Homes, which was eliminated in 2010, are removed.

Legislative Findings.

Legislative findings are made stating Washington's long-term care system must be more aggressive in protecting vulnerable populations and that the cost of system oversight should be borne by the licensed providers. Legislative findings related to adult family homes are amended to clarify that adult family homes have the responsibility to promote the health, welfare, and safety of their residents, while it is the state's role to develop and enforce standards that provide such protection.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 401 through 403, relating to long-term care licensing fees, which contain an emergency clause and take effect July 1, 2011. However, sections 501 through 503 of the bill, relating to budget, investigative staff, internal quality review, and a quality assurance panel, are null and void unless funded in the budget.

Staff Summary of Public Testimony (Health Care & Wellness):

(In support) This bill is a fundamental piece of an overall reform effort within the Department of Social and Health Services (Department). Washington has an antiquated adult protective services system that has not kept up with the growing numbers and complexity of the population. Adult protective services are now where child protective services were 25 years ago. This reform is based upon the principles of zero tolerance of abuse and neglect and shared responsibility with consumers, families, and neighbors. Adult family homes need to be brought up to the qualification standards of nursing homes and boarding homes. This bill has reasonable and sound regulations for adult family homes. This bill is about quality and safety. Adult family homes only pay about 6 percent of the cost of oversight activities. It is time that adult family homes pay their fair share of enforcement. This bill will allow for more investigators, faster investigations, and greater accountability. Requiring the manager to be on-site for eight hours per day if there is no trained caregiver present would be a good addition to the bill. It is important to have experienced caregivers in adult family homes. There should be an amendment to prevent cheating residents out of their money when they change homes. This bill will hold owners and operators accountable. Increased licensing fees, increased penalties, and increased provider qualifications are essential for keeping vulnerable adults safe. There should be a response time commitment added to the bill.

(Opposed) The Seattle Times series on adult family homes profiled nine adult family homes that had horrific patterns of neglect that broke existing laws. The problem is that the Department did not enforce existing regulations. The fee increase is equal to 225 hours of caregiver time that will have to be cut and will reduce the quality of patient care. The last year has been hard on the adult family home industry because of the economy and the Seattle Times series. This bill violates privacy by requiring providers to live in the home and by prohibiting providers from operating businesses in their adult family homes. The adult family homes should not have to pay for the Department's inefficiencies. Adult family homes save the state \$675,000 per day for their Medicaid residents. Inspections can be based upon frivolous complaints. Any fee increase will directly affect the operations of adult family homes. There is no system for verifying the actual number of complaints and the quality or validity of the complaints. Adult family homes who take in Medicaid clients can barely get by on their payments from the Department.

Staff Summary of Public Testimony (Ways & Means):

(In support) The policy for quality assurance is supported. People in adult family homes deserve the same level of investigation and quality as other long-term care settings. The Governor's proposal would cover the total costs of license fees and reduce the demand on the State General Fund by almost \$6 million which is important in these economic times. Adult family homes have had subsidized services provided by the taxpayers for over 20 years. The licensing fees need to remain at the level that covers existing costs and provides additional quality assurance. Not funding the license fees fully reduces services to other people who need services. There is less oversight if the license fees are not fully implemented.

(Opposed) This bill will have unintended consequences. It will not improve quality, rather it just cause doors to close on the industry. Adult family homes must comply with over 400 administrative rules already. You cannot legislate common sense. Violations are committed by uncaring individuals, not the industry as a whole. Adult family homes operate on a thin profit margin. Additional fees and costs will cause them to cut back on staff. The focus should be narrowed to only the homes that have infractions against them. This license fee is a 2,400 percent increase for adult family homes. The issues are not with the homes, but are with the way the Department does its inspections and finds infractions. Medicaid rates do not keep up with increasing overhead costs. This bill hurts the quality of care for the residents. Washington has created the adult family home industry to provide great care for our elderly and there will be a lot more demand for these services in the future. This bill will destroy the industry and will not allow that care to be available. Less than half of the adult family home owners can afford to pay themselves a salary.

Persons Testifying (Health Care & Wellness): (In support) Susan Dreyfus, Department of Social and Health Services; MaryAnne Lindeblad, Aging and Disability Services Administration, Department of Social and Health Services; Louise Ryan and Jeff Crollard, Office of the Long-Term Care Ombudsman; Joyce LaValle, Association for the Advancement of Retired Persons; Cheri Rudolph; and David Lord, Disability Rights Washington.

(Opposed) Cindi Laws, Hope Reffett, Frank Valdez, and Bonnie Bruce, Washington State Residential Care Council of Adult Family Homes; Rocky Chadbourne, New Hope Farms Adult Family Home; and Dan Powell.

Persons Testifying (Ways & Means): (In support) David Lord, Disability Rights Washington; Kathy Marshall, Department of Social and Health Services; and Louise Ryan, Washington State Long-Term Care Ombudsman.

(Opposed) Bonnie Bruce, Dorothy Schlimme, Barb Mach, Del Miles, Dan Simnioniw, and Lori Mey-Kenney, Washington State Residential Care Council of Adult Family Homes; Ben Anstey, A Loving Heart Adult Family Home; and Amy E. Thomas, Adult Family Homes United.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): (Opposed) Ed Midkiff, Dawn Chadbourne, and Gerald Allin, New Hope Farms.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.