

HOUSE BILL REPORT

HB 1315

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to employment of physicians by nursing homes.

Brief Description: Concerning the employment of physicians by nursing homes.

Sponsors: Representatives Kelley, Schmick, Cody, Hinkle, Van De Wege, Miloscia, Jinkins, Seaquist, Angel and Harris.

Brief History:

Committee Activity:

Health Care & Wellness: 2/2/11, 2/10/11 [DPS].

Brief Summary of Substitute Bill

- Allows nursing homes to employ physicians to provide professional services to its residents.
- Prohibits nursing homes from interfering with the employed physician's judgment concerning the practice of medicine or diagnosis and treatment of any patient.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Cody, Chair; Jinkins, Vice Chair; Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Bailey, Clibborn, Green, Harris, Kelley, Moeller and Van De Wege.

Staff: Morgan Powell (786-7119) and Chris Cordes (786-7103).

Background:

Medical Services in Nursing Homes.

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.

Nursing homes are licensed facilities that provide convalescent care and/or chronic care for more than 24 consecutive hours for three or more unrelated patients who are unable to care for themselves.

Each resident of a nursing home must have a comprehensive plan of care prepared by an interdisciplinary team that includes the attending physician. The nursing home must inform a resident of the name and specialty of the physician responsible for the resident's care and provide a way for the resident to contact his or her physician. According to federal interpretive guidelines for the Medicare and Medicaid programs, residents should be allowed to designate a personal physician, and the nursing home is responsible for assisting the resident to obtain these services.

A nursing home must ensure that a resident is seen by a physician whenever necessary and that the medical care provided by the nursing home is supervised by a physician (except for nursing homes that have not contracted to provide care under the Medicare or Medicaid programs). This includes supervising the medical care when the attending physician is not available and providing physician services 24 hours a day in case of emergency. Under some circumstances, physician tasks may be delegated to a physician assistant or advanced registered nurse practitioner who is not an employee of the nursing home.

A nursing home must designate a medical director who is responsible for implementing resident care policies and coordinating medical care in the facility.

A nursing home may maintain a quality assurance committee that includes a physician designated by the nursing home, along with the director of nursing services and three other staff members.

The Corporate Practice of Medicine.

Generally, under the common law in Washington, a business entity is prohibited from employing a medical professional to practice his or her licensed profession unless legislatively authorized. Courts conclude that this prohibition exists to protect the relationship between the professional and the patient.

By statute, persons licensed or authorized to render the same professional services are allowed to form a professional corporation (including a limited liability company). The Washington Supreme Court (Court) held that this statute did not authorize a business partnership between a nurse and a physician. In a 2010 case, the Court considered whether this statute or the corporate practice of medicine doctrine was violated by a limited liability company owned by physicians that employed physical therapists. The Court found no violation of either, reasoning that both physicians and physical therapists were providing aspects of the "practice of medicine."

Summary of Substitute Bill:

A nursing home may employ physicians to provide professional services to residents of the nursing home or a related living facility (such as a boarding home on the same campus). The authority applies both to the entity licensed to operate a nursing home and a subsidiary of the licensee, as long as the licensee adhere to its responsibility for the daily operations of the nursing home.

The nursing home may not supplant, diminish, or regulate any employed physician's judgment directly or indirectly, concerning the practice of medicine or diagnosis and treatment of any patient. The authority for a nursing home to employ a physician may not interfere with federal rules, state statutes, or Department of Social and Health Services (DSHS) rules addressing a resident's rights.

Substitute Bill Compared to Original Bill:

The substitute bill:

- changes the entity authorized to employ physicians from "any entity that owns, controls, or manages a nursing home" to "an entity licensed to operate a nursing home;"
- states that nothing in the bill is intended to relieve the licensed entity of its responsibility for the daily operations of the nursing home;
- states that nothing in the bill is intended to interfere with federal rules, state statutes, or DSHS rules addressing a resident's rights; and
- removes the requirement that the entity employing physicians notify the DSHS annually.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There is a need for physicians to be employed by nursing homes. The bill does not violate the Corporate Practice of Medicine. The bill brings clarity to the Corporate Practice of Medicine as it applies to nursing homes. The bill permits skilled nursing homes to employ physicians. Patients are being brought to nursing homes with more complications than in past years, which requires the need for physicians in nursing homes. On-site physicians allow for improvements in the quality of care that is provided to patients, in patient satisfaction, and in the cost of care.

(In support with concerns) Physicians employed by nursing homes should have training on the rights of the residents. Patients receiving Medicaid should still retain access to their own physicians and Medicaid funded services.

(Opposed) None.

Persons Testifying: (In support) Representative Kelley, prime sponsor; and Scott Sigmon and Kenneth Scott, Life Care Centers of America.

(In support with concerns) Louise Ryan, Office of the Long-Term Care Ombudsman.

Persons Signed In To Testify But Not Testifying: None.