

SENATE BILL REPORT

ESHB 1277

As of May 4, 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: Passed House: 4/06/11, 57-40; 5/02/11, 50-45.

Committee Activity: Ways & Means: 5/05/11.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Megan Atkinson (786-7446)

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. Individuals residing in these homes must be 18 years or older and are provided with all of the amenities of a home, but with the added services of care, supervision, and any assistance necessary to assure their health and safety. The population is mostly elderly and many have

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specialized needs such as dementia, developmental disabilities, and mental health issues. The state first licensed adult family homes in 1989. At the time, 287 homes were located throughout the state. Since then the industry has grown to just over 2,900 homes in 2010. State policy has supported the growth of adult family homes as an alternative to placing people who need care in nursing facilities. In 1992 licensing fees were set at a rate that would encourage industry expansion: \$50 per home regardless of the number of beds. That rate was increased in 2009 to \$100 per home, plus a processing fee. In 2010, 255 applications were received by the Department; 225 were approved. Over 43 percent of adult family home licensees have more than one home.

Approximately 60 percent of the residents in adult family homes pay for their care privately at an estimated average monthly rate of \$4,000 to \$5,000. The average monthly rate for Medicaid clients is approximately \$2,400. Today, the acuity level of Medicaid residents in adult family homes is similar to nursing homes. Many residents need continuous supervision, assistance with dressing, bathing, toileting, and medications.

Currently, adult family homes are inspected by the state at least every 18 months. According to the Department, between 2004-2009 the number of abuse and neglect complaints rose 45 percent.

Licensing Programs. 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:

- 220 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 of 22,788 beds in Washington;
- 550 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
- 2900 licensed adult family homes that provide services for approximately 6,900 Medicaid eligible clients. The average home has between five and six beds.

Summary of Bill: It is the Legislature's intent to address statutes and funding levels limiting the state's ability to protect vulnerable adults. It is also the Legislature's intent that the cost of facility oversight should be supported by an appropriate license fee paid by the regulated businesses, rather than by the general taxpayers.

The Department is given more licensing discretion. The Department may require that applicants of adult family homes wait 24 months between applications for multiple licenses and have no enforcement actions taken against any previously licensed homes in that time period; prove their ability to communicate in English; demonstrate financial solvency; complete 1000 hours of direct care giving experience in the previous three years; and finish 48 hours of classroom training in adult family home administration and business planning. The Department is directed to develop rules on the criteria for financial solvency.

New inspection standards shorten the annual inspection cycle of licensed homes from 18 months to 15 months. Sanctions for violating conditions of licensure include civil penalties of up to \$3,000 for each incident that violates licensing regulation, and each day that the violation continues. Civil penalties are authorized of up to \$10,000 for any current or former licensed provider operating an unlicensed home. If an operator of multiple homes has a serious issue of noncompliance, the Department must inspect the other homes of that provider and the cost of those inspections may be imposed on the provider up to \$300 per inspection.

The Department will specify in rule how monetary sanctions are applied and the criteria for the imposition of incrementally more severe penalties for deficiencies that are repeated, uncorrected, pervasive, or present a threat to health, safety, or welfare to residents. Prompt and specific enforcement remedies must be implemented without delay for providers who have shown these deficiencies.

A separate account is established in the custody of the State Treasurer to receive monies from civil penalties imposed under this chapter. The Department must use the money to improve the quality and care of residents in adult family homes.

All future homes must provide residents with sufficient space to accommodate all residents at one time in the dining and living areas, have hallways wide enough for mobility aids, and safe outdoor areas accessible for residents to use. All homes must provide access to common areas to the extent they are safe under the residents' care plans.

The provider or resident manager must assure there is a mechanism to communicate with the resident in his or her primary language either through a qualified person on site or readily available at all times, and have staff on site at all times capable of understanding and speaking English well enough to respond appropriately to emergency situations and understand resident care plans. No worker, paid or unpaid, with an uncompleted background check may have unsupervised access to residents.

A provider, resident manager, or qualified staff person must be present at the adult family home whenever residents are present.

Resident deposits amounting to \$100 or more paid to an adult family home must be placed in an interest-bearing account that is separate from any of the home's operating accounts. The act makes other restrictions and requires certain disclosures related to the handling of a resident's funds. Deceptive disclosures and unfair retention of deposits or prepaid charges by facilities will be construed as an unfair or deceptive act under the State's Consumer Protection Act.

Subject to funding – the state's long-term care ombudsman is directed to convene the adult family home quality assurance panel to recommend specific changes in the Department's oversight activities. The panel will include representatives from the Washington State Residential Care Council, adult family homes united, the Department and its field staff, Disability Rights of Washington, and members of the community. The Department must provide data on previous inspection, complaint investigation, and enforcement actions, as negotiated between the panel and the Department. The panel will make recommendations on specific changes on adult family oversight activities and report to the Governor and the Legislature by July 1, 2012.

Beginning July 1, 2011, the per bed license fee for nursing homes, boarding homes, and adult family homes must be established in the Omnibus Appropriations Act. The amount of the fee may not exceed the Department's annual licensing and oversight activity costs and must include the Department's cost of paying providers for the amount of the licensing fee attributed to Medicaid clients.

In addition, a \$2,750 initial processing fee for new adult family home licenses is required.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.