

# HOUSE BILL REPORT

## SSB 5028

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**As Reported by House Committee On:**  
Health Care & Wellness  
Appropriations

**Title:** An act relating to raising licensure limits to allow assisted living facilities to serve a higher acuity resident population.

**Brief Description:** Raising licensure limits to allow assisted living facilities to serve a higher acuity resident population.

**Sponsors:** Senate Committee on Health Care (originally sponsored by Senators Bailey, Dammeier, Cleveland, Keiser and Warnick).

**Brief History:**

**Committee Activity:**

Health Care & Wellness: 3/20/15, 3/26/15 [DPA];  
Appropriations: 4/6/15, 4/7/15 [DPA(HCW)].

**Brief Summary of Substitute Bill  
(As Amended by Committee)**

- Authorizes assisted living facilities with a designation from the Department of Social and Health Services to provide continuing nursing services to residents who need the frequent presence and evaluation of a registered nurse.
- Requires assisted living facilities with a continuing nursing services designation to notify residents in need of such services that they may be eligible for coverage for the services under Medicare, Medicaid, or another coverage program.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** Do pass as amended. Signed by 14 members: Representatives Cody, Chair; Riccelli, Vice Chair; Schmick, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Caldier, Clibborn, Jinkins, Johnson, Moeller, Robinson, Rodne, Short, Tharinger and Van De Wege.

**Staff:** Chris Blake (786-7392).

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*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.*

**Background:**

The Department of Social and Health Services (Department) licenses assisted living facilities which are community-based residences that provide housing and basic services to seven or more residents. Residents of assisted living facilities are people who live in the facility for reasons of age or disability and receive services provided by the facility. Assisted living facilities may not admit people who require nursing home or hospital level care or the frequent presence or evaluation of a registered nurse. Services provided to residents by assisted living facilities 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. Intermittent nursing services include: medication administration, administration of health care treatments, diabetic management, nonroutine ostomy care, tube feeding, and delegated nursing tasks.

Nonresident individuals may also live in an assisted living facility and receive specified services, but they may not receive domiciliary care from the facility. Some of the services that nonresident individuals may receive upon request include emergency assistance, blood pressure checks, nursing assessment services to determine the need for a referral to an outside health care provider, medication assistance such as reminding, opening containers, prefilling insulin syringes, falls risk assessments, nutrition management and education services, dental services, and wellness programs.

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**Summary of Amended Bill:**

An assisted living facility may obtain a designation from the Department of Social and Health Services (Department) that allows it to provide continuing nursing services to residents who require the frequent presence and evaluation of a registered nurse. A designation is not required in cases in which the resident is receiving hospice care or has a short-term illness if the assisted living facility assures that there are enough adequately trained providers available to meet the resident's needs. The term "continuous nursing services" applies to residents that have been assessed with a condition or diagnosis that is expected to require the frequent presence and supervision of a registered nurse. The prohibition against assisted living facilities admitting people who require nursing home or hospital level care, or the frequent presence or evaluation of a registered nurse is removed.

The Department must adopt rules related to the provision of continuing nursing services, including the process for designation, the extent to which continuing nursing services may be provided in assisted living facilities, staffing requirements, and physical plant requirements. To become designated, an assisted living facility must pass an initial inspection by the Department and subsequent inspections every 18 months. Applicants must pay a fee to the Department to defray the costs of the designation program.

Disclosure forms related to the scope of domiciliary care assistance provided to residents must include any limitations, additional services, or conditions related to the provision of continuing nursing services. If an assisted living facility with a designation to provide continuing nursing services observes changes in the overall functioning of residents receiving

these services, it must respond to any physical, mental, or emotional changes that exceed the facility's capabilities.

If an assisted living facility with a designation to provide continuous nursing services has reason to believe that a resident needs continuous nursing services or rehabilitative therapy services, the facility must provide the resident and appropriate representatives of the resident with a notice. The notice must inform the client that he or she may be eligible to have the services covered by Medicare, Medicaid, veterans' benefits, long-term care insurance, or other benefit programs. The resident or appropriate representative must sign the notice. Residents may contract for nursing or rehabilitative services through an outside health care provider or from the assisted living facility. An assisted living facility that fails to give proper notice and subsequently charges the resident privately commits financial exploitation under vulnerable adult protection laws.

Assisted living facilities that receive a continuing nursing services designation may not use the designation or facility modifications related to the designation to permanently discharge any current Medicaid residents. In addition, for one year following the receipt of the initial designation, an assisted living facility may not reduce the number of Medicaid residents that it retains below the highest number of Medicaid residents living there during the year prior to becoming designated. Assisted living facilities that receive a designation to provide continuing nursing services and participate in Medicaid may not involuntarily transfer, discharge, or refuse residence and services to a resident who becomes eligible for, or enrolls in, Medicaid due to a change in health status that requires continuing nursing services.

#### **Amended Bill Compared to Substitute Bill:**

The amended bill prohibits assisted living facilities with a designation to provide continuing nursing services from involuntarily transferring, discharging, or refusing residence and services to a resident who, because of a change in health status that requires continuing nursing services, becomes eligible for Medicaid or enrolls in Medicaid.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended 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) Assisted living facilities should be able to receive a designation to provide continuing nursing services to meet the needs of complex residents. Seniors should be able to live safely in the least restrictive environment possible and in the communities where they have been living for many years. Allowing seniors to stay in their assisted living facilities as their needs become more complex is critically important to person-centered care, maintaining a high quality of life, and avoidance of the stress and cost of moving people to different care

settings. This allows individuals to age in place for as long as possible and delay entry into a higher care setting at a higher cost such as a skilled nursing facility.

There needs to be a reimbursement system with incentives to providers to support aging in place and bringing care to people in their homes. The assisted living facility reimbursement system is broken because the rates are based on 2005 cost reports and the Legislature has cut reimbursements by 6 percent.

(In support with concerns) The concept of aging in place is good. This bill has a specific process in place for assuring quality of care in assisted living facilities so that people are safe in the facility of their choice.

(With concerns) While it is a good idea for people to move into an independent living unit and remain there as care needs increase, there is a concern that the facility could advertise certain services and then change them without notification. State law needs to require disclosure of any changes in services to all occupants.

(Opposed) People with limited resources need to know in advance the cost of an assisted living facility and what they are paying for. There needs to be complete disclosure for all services and all charges for all residents in assisted living facilities. While the state and the long-term care industry have good reasons to support continuing care retirement communities, there is still a lot of confusion for the general consumer. Disclosure will help occupants avoid unintended consequences.

There is factual data that is missing related to tracking nurse staffing rates. If this bill passes, more people will stay in assisted living facilities for longer, which could leave only the highest acuity persons in nursing homes.

**Persons Testifying:** (In support) Representative Johnson; Kim Clausen, Providence Health and Services; Scott Sigmon, Leading Age; and Dave Knutson, Washington Health Care Association.

(In support with concerns) Bill Moss, Department of Social and Health Services.

(With concerns) Kathleen Barth.

(Opposed) Norma Wilcox; Charlie McCarthy; and Liz Tidyman.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Health Care & Wellness. Signed by 32 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Condotta, Dent, Dunshee, Fagan, Haler, Hansen, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Sawyer, Senn, Springer, Stokesbary, Sullivan, Taylor, Tharinger, Van Werven and Walkinshaw.

**Staff:** James Kettel (786-7123).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Health Care & Wellness:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended 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) Assisted living providers could voluntarily staff up in order to seek a designation to provide a higher level of care to residents who would otherwise need to move into higher cost settings. Change can be difficult for residents if they are forced to move. Residents would be allowed to age in place for a longer time, and could stay with the family that they have come to know. Keeping residents in assisted living for a little longer is a good thing for residents and saves money by keeping the resident out of higher cost settings. Client choice would be expanded under this designation program, which builds on the already robust system of long-term care in Washington. Related to quality, there are some specific safeguards set up within the bill, and oversight would be provided by Residential Care Services.

(Opposed) Some questions have not been answered regarding this bill. If Medicaid-eligible individuals are receiving a higher level of care through continuous nursing services, then will Medicaid rates fully fund that higher level of care? Or, is it possible that the higher level of care will be subsidized by privately paying individuals? How is the fee schedule being disclosed to those privately paying individuals? Since the late 1980s, Washington has balanced the supply and demand of nursing care beds through the Certificate of Need program. It is possible that this bill could unleash 100 additional facilities seeking the designation to provide continuous nursing services. Nothing in state law requires assisted living providers to make full disclosure of all services and all charges to all customers. There is one disclosure requirement, but it only applies to residents in licensed units. If people are living in an unlicensed unit, then there is only a four-bullet disclosure form. This bill should be postponed until next year when there is a change to the disclosure requirements for privately paying individuals living in assisted living facilities.

**Persons Testifying:** (In support) Scott Sigmon, Leading Age Washington; and Bill Moss, Department of Social and Health Services.

(Opposed) Liz Tidyman.

**Persons Signed In To Testify But Not Testifying:** None.