

# HOUSE BILL REPORT

## SHB 1218

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### As Amended by the Senate

**Title:** An act relating to improving the health, safety, and quality of life for residents in long-term care facilities through emergency preparedness, improvements in communications, resident information, and notice of sanctions.

**Brief Description:** Improving health, safety, and quality of life for residents in long-term care facilities.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Bateman, Simmons, Sells, Lekanoff, Peterson, Stonier, Davis, Taylor, Dolan, Orwall, Cody, Santos, Ortiz-Self, Fitzgibbon, Slatter, Bronoske, Callan, Valdez, Ramel, Riccelli, Macri, Goodman and Harris-Talley).

### Brief History:

#### Committee Activity:

Health Care & Wellness: 1/28/21, 2/10/21 [DPS].

#### Floor Activity:

Passed House: 2/23/21, 95-2.

Senate Amended.

Passed Senate: 4/10/21, 27-21.

### Brief Summary of Substitute Bill

- Requires long-term care facilities to develop comprehensive disaster preparedness plans.
- Requires long-term care facilities to be responsive to incoming communications with the public and accommodate resident access to communication equipment.
- Requires long-term care facilities to maintain a current resident roster and contact information about each resident and any resident representative.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

- Requires long-term care facilities to post notice of any stop placements or limited stop placements that have been imposed on the facility.
- Directs the Department of Social and Health Services to develop training materials to educate local health jurisdictions about the state's long-term care system and the rights of residents.
- Provides residents of long-term care facilities the right to visitation by an essential support person during times when resident visitation is limited.

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## HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Bronoske, Davis, Macri, Riccelli, Simmons, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Caldier, Assistant Ranking Minority Member; Ybarra.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Harris, Maycumber and Rude.

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

### **Background:**

#### Long-Term Care Facilities.

The Department of Social and Health Services (Department) licenses four primary types of residential long-term care settings: nursing homes, assisted living facilities, adult family homes, and enhanced services facilities.

- 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.
- Assisted Living Facilities: Assisted living facilities are facilities that provide housing and basic services to seven or more residents. Services provided 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.
- Adult Family Homes: Adult family homes are facilities licensed to care for up to eight 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.

- Enhanced Services Facilities: Enhanced services facilities provide treatment and services to persons who do not have a medical need for acute inpatient treatment and have been determined by the Department to be inappropriate for placement in other licensed facilities because of complex needs that result in behavioral and security issues.

The Department administers the licensing programs for each of the long-term care facilities. 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. Sanctions against a facility for noncompliance may include conditions on a license, civil penalties, stop placement orders, and the suspension or revocation of a license.

### **Summary of Substitute Bill:**

#### Comprehensive Disaster Preparedness Plans.

Assisted living facilities, enhanced services facilities, and nursing homes (collectively, "long-term care facilities") must develop and maintain comprehensive disaster preparedness plans (preparedness plans). The preparedness plans must address procedures to be followed during a disaster or emergency, such as a fire, earthquake, flood, infectious disease outbreak, loss of power or water, or other measures that may require sheltering in place, evacuation, or other emergency measures. The Department of Social and Health Services (Department) must adopt rules governing preparedness plans to address:

- timely communications with the residents' emergency contacts;
- timely communications with state and local agencies, long-term care ombuds, and developmental disability ombuds;
- on-duty employees' responsibilities;
- requests for emergency assistance;
- residents' essential needs;
- procedures to identify each resident that has been evacuated or transferred and the resident's immediate location and to provide emergency information for each resident's health or safety;
- standards for maintaining personal protective equipment and infection control capabilities; and
- inspection procedures related to the preparedness plans.

#### Resident Contact Information.

Each long-term care facility, as well as adult family homes, must maintain a current resident roster that includes the name and room number of each resident. The roster must be provided immediately upon an in-person request from any long-term care ombuds. In addition, they must maintain aggregated contact information for all residents, including name, room number, and any telephone number and email. The contact information must also include information about any resident representative, including name, relation to the

resident, phone number, and any email and mailing address. Upon written request, the contact information must be provided to any long-term care ombuds within 48 hours of the request or within a reasonable time, as agreed to by the requesting long-term care ombuds.

The Department must inform long-term care facilities, as well as adult family homes, that: (1) long-term care ombuds have the right to obtain contact information; (2) the state Long-Term Care Ombuds program and all long-term care ombuds are considered a health oversight agency for purposes of state and federal health information privacy laws which permit the sharing of information; (3) the information requested by a long-term care ombuds becomes property of the state and is subject to confidentiality and disclosure laws; and (4) the long-term care facility may not refuse to provide or unreasonably delay providing the resident roster or the contact information on the basis that the facility must first seek or obtain consent from a resident or resident representative.

#### Resident Communications.

Long-term care facilities must be responsive to incoming communications and respond within a reasonable time to telephone and electronic messages. Each long-term care facility must have a communications system with enough working telephones and other communications equipment to ensure that residents have 24-hour access to communications with family members, medical providers, and others. The communications equipment must allow for auditory privacy and not be located in a staff office or station and be usable by persons with hearing loss and other disabilities. Long-term care facilities are not required to provide telephones at no cost in each resident room.

#### Posting of Stop Placement Orders.

Any long-term care facility, as well as an adult family home, that is subject to a stop placement or limited stop placement must publicly post a standardized notice developed by the Department that an order has been issued. The notice must be posted in a conspicuous place at the long-term care facility or adult family home and must include the date of the order, the conditions placed on the license, contact information for the Department, contact information for the administrator of the long-term care facility or adult family home, and a statement that anyone may contact the Department or administrator for additional information.

#### Essential Support Persons.

In circumstances in which resident visitation is limited due to a public health emergency or other threat to the health and safety of the residents and staff of a long-term care facility, residents must be allowed access to an essential support person. An "essential support person" is defined as a person who is at least 18 years old, is designated by the resident or resident representative, and is necessary for the resident's emotional, mental, or physical well-being in compassionate care or end-of-life care situations, situations where the visitation from a familiar person will reduce the confusion or anxiety of a cognitively impaired resident, or other situations involving emotional distress. Long-term care facilities must allow an essential support person to visit the resident, subject to reasonable restrictions

as necessary to protect the health and safety of the essential support person, residents, and staff. A person's designation as an essential support person may be temporarily suspended if the person does not comply with health and safety conditions established by the long-term care facility.

#### Public Health Training.

The Department and the Department of Health, in collaboration with the State Office of the Long-Term Care Ombuds and representatives of long-term care facilities and adult family homes, must develop training materials to educate leadership and staff of local health jurisdictions about the state's long-term care system and the rights of residents. The training must cover state and federal resident rights and the process for local health jurisdiction personnel to report abuse and neglect in long-term care facilities.

#### Definition of "Resident Representative".

The term "representative," as used in the context of resident rights, is changed to "resident representative." The definition is changed from persons able to provide informed consent for a patient who is not competent to:

1. a court-appointed guardian or conservator of the resident;
2. an individual authorized under state or federal law to act on behalf of the resident to support the resident in decision-making; to access medical, social, or other personal information; to manage financial matters; or receive notification; or
3. if there no person available under the first two options, then an individual chosen by the resident to act on behalf of the resident to support the resident in decision-making; to access medical, social, or other personal information; to manage financial matters; or receive notification.

#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment directs the Department of Health and the Department of Social and Health Services to develop a report and guidelines on epidemic disease preparedness and response for long-term care facilities. The agencies must consult with stakeholders including local health jurisdictions, advocates for consumers of long-term care, associations representing long-term care facility providers, and the Office of the State Long-Term Care Ombuds. The report must address visitation policies, access to personal protective equipment and other infection control supplies, admission and discharge policies and standards, and rapid and accurate testing to identify infectious outbreaks. The report must consider federal rules, consider each provider type, develop an implementation timeline for the guidelines, consider available resources for infection control, establish methods to ensure the consistent application of the guidelines, and develop a process to maintain and update the guidelines. A draft report and guidelines on COVID-19 are due by December 1, 2021, and a final report by July 1, 2022. Beginning December 1, 2022, the agencies must review the report and guidelines and make any necessary changes regarding COVID-19 and emerging epidemics of public health concern. The updated reports and guidelines must be submitted to the health care committees of the Legislature and include any

recommendations for necessary statutory changes.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill addresses the most significant problems facing residents and their families including communication, isolation, and critical safety issues, with immediate changes and necessary reforms for the future. This bill is a response to the last year that seeks to address some of the most critical concerns of residents and families and is a reasonable and systematic approach.

Early action by the Governor during the COVID-19 pandemic to restrict visitations for long-term care residents saved lives, but many residents are suffering and living without the lifelines that many take for granted and this has had severe impacts on their physical and emotional health. The Office of the Long-Term Care Ombuds has seen higher trends in certain complaints related to family communication with loved ones. Residents of long-term care facilities deserve a level of care and communication from staff that respect them and their families. Visits by essential support persons can have a calming and reassuring effect on long-term care residents and can help with care coordination and relationships with staff.

It is important for licensers to specifically include an assessment of personal protective equipment supply as part of their annual inspections. Many long-term care facilities were caught off guard at the beginning of the pandemic and had little supply of personal protective equipment. This bill will better prepare long-term care facilities for the next infectious disease outbreak.

(Opposed) This bill has duplicative requirements and a fundamental misunderstanding of the adult family home setting. This bill applies a regulatory response to what is actually a resource issue. Adult family homes were not part of the development of this bill and should be brought to the table to discuss these concerns as part of a more inclusive stakeholder process.

(Other) It would be better to take a retrospective look once the pandemic is over to adopt recommendations to make solid changes and get the process right the first time. Long-term care providers should have a seat at the table when changes like these are being made. This bill is unnecessary because many of these changes are already covered under current statute and any new changes could be accomplished through rulemaking or policies. Any

additional regulation will be a burden to an industry that is already stretched incredibly thin.

There are opportunities to shore up emergency planning and response efforts in the long-term care sector, but this legislation does not do that. The emergency preparedness regulation consists of 42 elements and a risk assessment that also covers infectious disease and an extensive communication plan.

There have been many challenges during the pandemic, and the most difficult has been the mandate to restrict visitation in long-term care facilities. Long-term care facilities are following the Governor's Safe Start plan to include essential visits. Providing updates and monitoring calls takes time and staff. There are potential conflicts in state and federal law that residents supply a comprehensive resident roster to long-term care ombuds within 48 hours.

**Persons Testifying:** (In support) Representative Bateman, prime sponsor; Patricia Hunter, Washington State Long Term Care Ombuds; Katrina Rostedt; Sue Fox; and Roberta Crawford.

(Opposed) John Ficker, Adult Family Home Council.

(Other) Lauri St. Ours, Washington Health Care Association; Linda Emmett, Avalon Health Care; Alyssa Odegaard, LeadingAge Washington; and Dave Foltz, Transforming Age.

**Persons Signed In To Testify But Not Testifying:** Cheryl Perazzoli, Hearing Loss Association of America–Washington; Cathleen MacCaul, AARP–Washington; Kristine Kraig, Retired Public Employee Council of Washington; Joanna Grist; and Lou Perazzoli.