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HOUSE BILL 1901

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State of Washington                      62nd Legislature                      2011 Regular Session

By Representatives Cody and Hinkle

Read first time 02/09/11. Referred to Committee on Health Care & Wellness.

1            AN ACT Relating to reshaping the delivery of long-term care  
2 services; amending RCW 18.20.020, 18.20.030, 18.20.330, 18.20.160,  
3 18.52.030, 18.51.010, and 70.126.020; adding new sections to chapter  
4 74.42 RCW; adding a new section to chapter 74.39A RCW; and creating new  
5 sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            NEW SECTION.    **Sec. 1.**    The legislature has a long history of  
8 supporting seniors where they live whether it is at home or in a  
9 licensed care facility. It is widely recognized that the consumer of  
10 senior services and long-term care of tomorrow will have different  
11 demands and expectations for the type and manner of supportive and  
12 health care services that they receive. Cost efficiencies must and can  
13 be achieved within the health care system. Through the use of care  
14 coaches, technology-supported health and wellness programs, and by  
15 allowing greater flexibility for the specialization and use of nursing  
16 facility beds, costly hospitalizations and rehospitalizations can be  
17 reduced and the entry to licensed care settings can be delayed.

1       **Sec. 2.** RCW 18.20.020 and 2006 c 242 s 1 are each amended to read  
2 as follows:

3       As used in this chapter:

4       (1) "Boarding home" means any home or other institution, however  
5 named, which is advertised, announced, or maintained for the express or  
6 implied purpose of providing housing, basic services, and assuming  
7 general responsibility for the safety and well-being of the residents,  
8 and may also provide domiciliary care, consistent with chapter 142,  
9 Laws of 2004, to seven or more residents after July 1, 2000. However,  
10 a boarding home that is licensed for three to six residents prior to or  
11 on July 1, 2000, may maintain its boarding home license as long as it  
12 is continually licensed as a boarding home. "Boarding home" shall not  
13 include facilities certified as group training homes pursuant to RCW  
14 71A.22.040, nor any home, institution or section thereof which is  
15 otherwise licensed and regulated under the provisions of state law  
16 providing specifically for the licensing and regulation of such home,  
17 institution or section thereof. Nor shall it include any independent  
18 senior housing, independent living units in continuing care retirement  
19 communities, or other similar living situations including those  
20 subsidized by the department of housing and urban development.

21       (2) "Basic services" means housekeeping services, meals, nutritious  
22 snacks, laundry, and activities.

23       (3) "Person" means any individual, firm, partnership, corporation,  
24 company, association, or joint stock association, and the legal  
25 successor thereof.

26       (4) "Secretary" means the secretary of social and health services.

27       (5) "Department" means the state department of social and health  
28 services.

29       (6) "Resident's representative" means a person designated  
30 voluntarily by a competent resident, in writing, to act in the  
31 resident's behalf concerning the care and services provided by the  
32 boarding home and to receive information from the boarding home, if  
33 there is no legal representative. The resident's competence shall be  
34 determined using the criteria in RCW 11.88.010(1)(e). The resident's  
35 representative may not be affiliated with the licensee, boarding home,  
36 or management company, unless the affiliated person is a family member  
37 of the resident. The resident's representative shall not have

1 authority to act on behalf of the resident once the resident is no  
2 longer competent.

3 (7) "Domiciliary care" means: Assistance with activities of daily  
4 living provided by the boarding home either directly or indirectly; or  
5 health support services, if provided directly or indirectly by the  
6 boarding home; or (~~intermittent~~) nursing services, if provided  
7 directly or indirectly by the boarding home.

8 (8) "General responsibility for the safety and well-being of the  
9 resident" means the provision of the following: Prescribed general low  
10 sodium diets; prescribed general diabetic diets; prescribed mechanical  
11 soft foods; emergency assistance; monitoring of the resident; arranging  
12 health care appointments with outside health care providers and  
13 reminding residents of such appointments as necessary; coordinating  
14 health care services with outside health care providers consistent with  
15 RCW 18.20.380; assisting the resident to obtain and maintain glasses,  
16 hearing aids, dentures, canes, crutches, walkers, wheelchairs, and  
17 assistive communication devices; observation of the resident for  
18 changes in overall functioning; blood pressure checks as scheduled;  
19 responding appropriately when there are observable or reported changes  
20 in the resident's physical, mental, or emotional functioning; or  
21 medication assistance as permitted under RCW 69.41.085 and as defined  
22 in RCW 69.41.010.

23 (9) "Legal representative" means a person or persons identified in  
24 RCW 7.70.065 who may act on behalf of the resident pursuant to the  
25 scope of their legal authority. The legal representative shall not be  
26 affiliated with the licensee, boarding home, or management company,  
27 unless the affiliated person is a family member of the resident.

28 (10) "Nonresident individual" means a person who resides in  
29 independent senior housing, independent living units in continuing care  
30 retirement communities, or in other similar living environments or in  
31 an unlicensed room located within a boarding home (~~and may receive~~).  
32 Nothing in this chapter prohibits nonresidents from receiving one or  
33 more of the services listed in RCW 18.20.030(5) or requires licensure  
34 as a boarding home when one or more of the services listed in RCW  
35 18.20.030(5) are provided to nonresidents. A nonresident individual  
36 may not receive domiciliary care, as defined in this chapter, directly  
37 or indirectly by the boarding home and may not receive the items and

1 services listed in subsection (8) of this section, except during the  
2 time the person is receiving adult day services as defined in this  
3 section.

4 (11) "Resident" means an individual who is not related by blood or  
5 marriage to the operator of the boarding home, and by reason of age or  
6 disability, chooses to reside in the boarding home and receives basic  
7 services and one or more of the services listed under general  
8 responsibility for the safety and well-being of the resident and may  
9 receive domiciliary care or respite care provided directly or  
10 indirectly by the boarding home and shall be permitted to receive  
11 hospice care through an outside service provider when arranged by the  
12 resident or the resident's legal representative under RCW 18.20.380.

13 (12) "Resident applicant" means an individual who is seeking  
14 admission to a licensed boarding home and who has completed and signed  
15 an application for admission, or such application for admission has  
16 been completed and signed in their behalf by their legal representative  
17 if any, and if not, then the designated representative if any.

18 (13) "Adult day services" means care and services provided to a  
19 nonresident individual by the boarding home on the boarding home  
20 premises, for a period of time not to exceed ten continuous hours, and  
21 does not involve an overnight stay.

22 **Sec. 3.** RCW 18.20.030 and 2004 c 142 s 17 are each amended to read  
23 as follows:

24 (1) After January 1, 1958, no person shall operate or maintain a  
25 boarding home as defined in this chapter within this state without a  
26 license under this chapter.

27 (2) A boarding home license is not required for the housing, or  
28 services, that are customarily provided under landlord tenant  
29 agreements governed by the residential landlord-tenant act, chapter  
30 59.18 RCW, or when housing nonresident individuals who(~~(, without~~  
31 ~~ongoing assistance from the boarding home, initiate and arrange for~~  
32 ~~services provided by persons other than)) chose to participate in  
33 programs or services under subsection (5) of this section, when offered  
34 by the boarding home licensee or the licensee's contractor. This  
35 subsection does not prohibit the licensee from furnishing written  
36 information concerning available community resources to the nonresident~~

1 individual or the individual's family members or legal representatives.  
2 The licensee may not require the use of any particular service  
3 provider.

4 (3) Residents receiving domiciliary care, directly or indirectly by  
5 the boarding home, are not considered nonresident individuals for the  
6 purposes of this section.

7 (4) A boarding home license is required when any person other than  
8 an outside service provider, under RCW 18.20.380, or family member:

9 (a) Assumes general responsibility for the safety and well-being of  
10 a resident;

11 (b) Provides assistance with activities of daily living, either  
12 directly or indirectly;

13 (c) Provides health support services, either directly or  
14 indirectly; or

15 (d) Provides (~~intermittent~~) nursing services, either directly or  
16 indirectly.

17 (5) A boarding home license is not required for one or more of the  
18 following services that may, upon the request of the nonresident, be

19 provided to a nonresident individual: (a) Emergency assistance  
20 provided on an intermittent or nonroutine basis (~~to any nonresident~~  
21 ~~individual~~); (b) systems, including technology-based monitoring

22 devices, employed by independent senior housing, or independent living  
23 units in continuing care retirement communities, to respond to the  
24 potential need for emergency services (~~for nonresident individuals~~);

25 (c) (~~infrequent, voluntary, and~~) scheduled and nonscheduled blood  
26 pressure checks (~~for nonresident individuals~~); (d) (~~nurse referral~~)

27 nursing assessment services (~~provided at the request of a nonresident~~  
28 ~~individual~~) to determine whether referral to an outside health care  
29 provider is recommended; (e) making and reminding the nonresident of

30 health care appointments (~~at the request of nonresident individuals~~);  
31 (f) preadmission assessment(~~, at the request of the nonresident~~  
32 ~~individual,~~) for the purposes of transitioning to a licensed care  
33 setting; (~~or~~) (g) medication assistance when performed by a nurse

34 licensed under chapter 18.79 RCW and may include reminding or coaching  
35 the nonresident, opening the nonresident's medication container, using  
36 an enabler, and prefilling insulin syringes; (h) falls risk assessment

37 and prevention services; (i) nutrition management and education  
38 services; (j) dental services; (k) wellness programs; or (l) services

1 customarily provided under landlord tenant agreements governed by the  
2 residential landlord-tenant act, chapter 59.18 RCW. ((The preceding  
3 services may not include continual care or supervision of a nonresident  
4 individual without a boarding home license.))

5 **Sec. 4.** RCW 18.20.330 and 2004 c 142 s 5 are each amended to read  
6 as follows:

7 (1) Boarding homes are not required to provide ((intermittent))  
8 nursing services. The boarding home licensee may choose to provide any  
9 of the following ((intermittent)) nursing services through  
10 appropriately licensed and credentialed staff, however, the facility  
11 may or may not need to provide additional ((intermittent)) nursing  
12 services to comply with the reasonable accommodation requirements in  
13 federal or state law:

- 14 (a) Medication administration;
- 15 (b) Administration of health care treatments;
- 16 (c) Diabetic management;
- 17 (d) Nonroutine ostomy care;
- 18 (e) Tube feeding; ((and))
- 19 (f) Nurse delegation consistent with chapter 18.79 RCW; and
- 20 (g) Other personal and special care services as defined by the  
21 department in rule.

22 (2) The licensee shall clarify on the disclosure form any  
23 limitations, additional services, or conditions that may apply under  
24 this section.

25 (3) In providing ((intermittent)) nursing services, the boarding  
26 home shall observe the resident for changes in overall functioning and  
27 respond appropriately when there are observable or reported changes in  
28 the resident's physical, mental, or emotional functioning.

29 (4) The boarding home ((may)) must provide ((intermittent)) nursing  
30 services ((to the extent permitted by)) consistent with the staffing  
31 requirements described in RCW 18.20.160.

32 **Sec. 5.** RCW 18.20.160 and 2004 c 142 s 12 are each amended to read  
33 as follows:

34 ((No person operating a boarding home licensed under this chapter  
35 shall admit to or retain in the boarding home any aged person requiring  
36 nursing or medical care of a type provided by institutions licensed

1 under chapters 18.51, 70.41 or 71.12 RCW, except that when registered  
2 nurses are available, and upon a doctor's order that a supervised  
3 medication service is needed, it may be provided. Supervised  
4 medication services, as defined by the department and consistent with  
5 chapters 69.41 and 18.79 RCW, may include an approved program of self-  
6 medication or self-directed medication. Such medication service shall  
7 be provided only to residents who otherwise meet all requirements for  
8 residency in a boarding home. No boarding home shall admit or retain  
9 a person who requires the frequent presence and frequent evaluation of  
10 a registered nurse, excluding persons who are receiving hospice care or  
11 persons who have a short term illness that is expected to be resolved  
12 within fourteen days.) The boarding home must assure that sufficient  
13 numbers of appropriately qualified and trained staff are available to  
14 provide care and services consistent with this chapter.

15 **Sec. 6.** RCW 18.52.030 and 2000 c 93 s 6 are each amended to read  
16 as follows:

17 Nursing homes operating within this state shall be under the  
18 active, overall administrative charge and supervision of an on-site  
19 full-time administrator licensed as provided in this chapter. No  
20 person acting in any capacity, unless the holder of a nursing home  
21 administrator's license issued under this chapter, shall be charged  
22 with the overall responsibility to make decisions or direct actions  
23 involved in managing the internal operation of a nursing home, except  
24 as specifically delegated in writing by the administrator to identify  
25 a responsible person to act on the administrator's behalf when the  
26 administrator is absent. The administrator shall review the decisions  
27 upon the administrator's return and amend the decisions if necessary.  
28 The board shall define by rule the parameters for on-site full-time  
29 administrators in nursing homes with small resident populations  
30 ((and)), nursing homes in rural areas, nursing homes with small  
31 resident populations when the nursing home has converted some of its  
32 licensed nursing facility bed capacity for use as assisted living or  
33 enhanced assisted living services under chapter 74.39A RCW, or  
34 separately licensed facilities collocated on the same campus.

35 **Sec. 7.** RCW 18.51.010 and 1983 c 236 s 1 are each amended to read  
36 as follows:

1           (1) "Nursing home" means any home, place or institution which  
2 operates or maintains facilities (~~(providing)~~) to provide one or more  
3 of the following: Convalescent (~~(or)~~) care, chronic care, or (~~both,~~)  
4 postacute care for a period in excess of twenty-four consecutive hours  
5 for three or more patients not related by blood or marriage to the  
6 operator, who by reason of illness or infirmity, are unable properly to  
7 care for themselves. Postacute care may include those services as  
8 defined by the department in rule and consistent with section 10 of  
9 this act. Convalescent and chronic care may include but not be limited  
10 to any or all procedures commonly employed in waiting on the sick, such  
11 as administration of medicines, preparation of special diets, giving of  
12 bedside nursing care, application of dressings and bandages, and  
13 carrying out of treatment prescribed by a duly licensed practitioner of  
14 the healing arts. It may also include care of mentally incompetent  
15 persons. It may also include community-based care in the absence of  
16 alternative placement options. Nothing in this definition shall be  
17 construed to include general hospitals or other places which provide  
18 care and treatment for the acutely ill and maintain and operate  
19 facilities for major surgery or obstetrics, or both. Nothing in this  
20 definition shall be construed to include any boarding home, guest home,  
21 hotel or related institution which is held forth to the public as  
22 providing, and which is operated to give only board, room and laundry  
23 to persons not in need of medical or nursing treatment or supervision  
24 except in the case of temporary acute illness. The mere designation by  
25 the operator of any place or institution as a hospital, sanitarium, or  
26 any other similar name, which does not provide care for the acutely ill  
27 and maintain and operate facilities for major surgery or obstetrics, or  
28 both, shall not exclude such place or institution from the provisions  
29 of this chapter: PROVIDED, That any nursing home providing psychiatric  
30 treatment shall, with respect to patients receiving such treatment,  
31 comply with the provisions of RCW 71.12.560 and 71.12.570.

32           (2) "Person" means any individual, firm, partnership, corporation,  
33 company, association, or joint stock association, and the legal  
34 successor thereof.

35           (3) "Secretary" means the secretary of the department of social and  
36 health services.

37           (4) "Department" means the state department of social and health  
38 services.



1 (5) "Community-based care" means but is not limited to the  
2 following:

- 3 (a) Home delivered nursing services;
- 4 (b) Personal care;
- 5 (c) Day care;
- 6 (d) Nutritional services, both in-home and in a communal dining  
7 setting;
- 8 (e) Habilitation care; and
- 9 (f) Respite care.

10 **Sec. 8.** RCW 70.126.020 and 1984 c 22 s 5 are each amended to read  
11 as follows:

12 (1) Home health care shall be provided by a home health agency and  
13 shall:

14 (a) Be delivered by a registered nurse, physical therapist,  
15 occupational therapist, speech therapist, or home health aide on a  
16 part-time or intermittent basis;

17 (b) Include, as applicable under the written plan, supplies and  
18 equipment such as:

19 (i) Drugs and medicines that are legally obtainable only upon a  
20 physician's written prescription, and insulin;

21 (ii) Rental of durable medical apparatus and medical equipment such  
22 as wheelchairs, hospital beds, respirators, splints, trusses, braces,  
23 or crutches needed for treatment;

24 (iii) Supplies normally used for hospital inpatients and dispensed  
25 by the home health agency such as oxygen, catheters, needles, syringes,  
26 dressings, materials used in aseptic techniques, irrigation solutions,  
27 and intravenous fluids.

28 (2) The following services may be included when medically  
29 necessary, ordered by the attending physician, and included in the  
30 approved plan of treatment:

31 (a) Licensed practical nurses;

32 (b) Respiratory therapists;

33 (c) Social workers holding a master's degree;

34 (d) Ambulance service that is certified by the physician as  
35 necessary in the approved plan of treatment because of the patient's  
36 physical condition or for unexpected emergency situations.

37 (3) Services not included in home health care include:

- 1 (a) Nonmedical, custodial, or housekeeping services except by home
- 2 health aides as ordered in the approved plan of treatment;
- 3 (b) "Meals on Wheels" or similar food services;
- 4 (c) Nutritional guidance;
- 5 (d) Services performed by family members;
- 6 (e) Services not included in an approved plan of treatment;
- 7 (f) Supportive environmental materials such as handrails, ramps,
- 8 telephones, air conditioners, and similar appliances and devices; and
- 9 (g) Follow to home services provided by a care coach as authorized
- 10 under section 9 of this act.

11 NEW SECTION. Sec. 9. A new section is added to chapter 74.42 RCW  
12 to read as follows:

13 Nursing homes may establish and provide nonmedical care management  
14 services to persons discharged to home for a period of up to thirty  
15 days following discharge from the nursing home. The services provided  
16 under this section should improve care transitions to the home,  
17 minimize patient safety concerns within the home environment, lead to  
18 improved care outcomes by monitoring patient compliance with the  
19 postdischarge plan of care, and lead to more timely intervention and  
20 coordination with outside service providers when needed. The on-site  
21 or remote visit schedule should occur within two, seven, fourteen,  
22 twenty-one, and thirty days following the nursing home discharge. The  
23 follow to home services provided under this section are not available  
24 to patients who are eligible for and require home health services under  
25 chapter 70.126 RCW.

26 NEW SECTION. Sec. 10. A new section is added to chapter 74.42 RCW  
27 to read as follows:

28 The department shall adopt rules to establish postacute care  
29 program certification standards. The postacute care program  
30 certification standards established under this section must be designed  
31 for patients requiring medical care, skilled nursing care, or  
32 rehabilitation services due to complex medical conditions or multiple  
33 acute or chronic illnesses following an acute hospital stay and prior  
34 to returning to home. Postacute care programs authorized under this  
35 section must be limited to persons expected to have relatively shorter  
36 stays in duration of ninety days or less. The department may establish

1 exceptions to the ninety day limitation. Persons requiring chronic  
2 care or convalescent care may not be admitted to or retained in a  
3 postacute care certified unit unless they otherwise need the level and  
4 intensity of the care and services offered by the postacute care  
5 programs.

6 NEW SECTION. **Sec. 11.** A new section is added to chapter 74.39A  
7 RCW to read as follows:

8 The department of social and health services shall convene a work  
9 group of acute care facilities, long-term care facilities, housing for  
10 seniors, services for seniors, state agencies, the long-term care  
11 ombudsman's office, and consumers. The work group shall identify the  
12 chronic and acute care service needs of the region's residents over the  
13 next ten years and the existing service capacity of the provider  
14 community to meet those identified needs. The work group shall develop  
15 a plan to coordinate care to achieve efficiencies, cost savings, and  
16 improve quality outcomes. The work group shall submit its plan to the  
17 governor and the legislature by December 31, 2011.

18 NEW SECTION. **Sec. 12.** The department of social and health  
19 services shall convene a work group of stakeholders to discuss and  
20 identify one or more mechanisms to incentivize nursing facilities to  
21 close or to eliminate licensed beds from active service. The  
22 department shall adopt rules to implement the recommendations of the  
23 work group. By September 1, 2011, the department shall report to the  
24 governor and the legislature on the recommendations of the work group  
25 and the status of the department's rule-making efforts and any  
26 statutory impediments to the implementation of any of the  
27 recommendations.

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