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ENGROSSED SUBSTITUTE SENATE BILL 5708

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State of Washington

62nd Legislature

2011 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senator Keiser)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to reshaping the delivery of long-term care  
2 services; amending RCW 18.20.020, 18.20.030, and 18.52.030; reenacting  
3 and amending RCW 70.127.040; adding a new section to chapter 18.20 RCW;  
4 adding a new section to chapter 74.42 RCW; and creating new sections.

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

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

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

1 As used in this chapter:

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

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

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

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

25 (5) "Department" means the state department of social and health  
26 services.

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

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

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

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

26 (10) "Nonresident individual" means a person who resides in  
27 independent senior housing, independent living units in continuing care  
28 retirement communities, or in other similar living environments or in  
29 an unlicensed room located within a boarding home ((and may receive)).  
30 Nothing in this chapter prohibits nonresidents from receiving one or  
31 more of the services listed in RCW 18.20.030(5) or requires licensure  
32 as a boarding home when one or more of the services listed in RCW  
33 18.20.030(5) are provided to nonresidents. A nonresident individual  
34 may not receive domiciliary care, as defined in this chapter, directly  
35 or indirectly by the boarding home and may not receive the items and  
36 services listed in subsection (8) of this section, except during the  
37 time the person is receiving adult day services as defined in this  
38 section.

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

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

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

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

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

24 (2) A boarding home license is not required for the housing, or  
25 services, that are customarily provided under landlord tenant  
26 agreements governed by the residential landlord-tenant act, chapter  
27 59.18 RCW, or when housing nonresident individuals who(~~(7) without~~  
28 ~~ongoing assistance from the boarding home, initiate and arrange for~~  
29 ~~services provided by persons other than~~) chose to participate in  
30 programs or services under subsection (5) of this section, when offered  
31 by the boarding home licensee or the licensee's contractor. This  
32 subsection does not prohibit the licensee from furnishing written  
33 information concerning available community resources to the nonresident  
34 individual or the individual's family members or legal representatives.  
35 The licensee may not require the use of any particular service  
36 provider.

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

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

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

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

10 (c) Provides health support services, either directly or  
11 indirectly; or

12 (d) Provides intermittent nursing services, either directly or  
13 indirectly.

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

16 provided to a nonresident individual: (a) Emergency assistance  
17 provided on an intermittent or nonroutine basis (~~to any nonresident~~

18 ~~individual~~); (b) systems, including technology-based monitoring  
19 devices, employed by independent senior housing, or independent living

20 units in continuing care retirement communities, to respond to the  
21 potential need for emergency services (~~for nonresident individuals~~);

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

24 nursing assessment services (~~provided at the request of a nonresident~~  
25 ~~individual~~) to determine whether referral to an outside health care

26 provider is recommended; (e) making and reminding the nonresident of  
27 health care appointments (~~at the request of nonresident individuals~~);

28 (f) preadmission assessment (~~at the request of the nonresident~~  
29 ~~individual~~) for the purposes of transitioning to a licensed care

30 setting; (~~or~~) (g) medication assistance which may include reminding  
31 or coaching the nonresident, opening the nonresident's medication

32 container, using an enabler, and prefilling insulin syringes; (h) falls  
33 risk assessment; (i) nutrition management and education services; (j)

34 dental services; (k) wellness programs; or (l) services customarily  
35 provided under landlord tenant agreements governed by the residential

36 landlord-tenant act, chapter 59.18 RCW. (~~The preceding services may~~  
37 ~~not include continual care or supervision of a nonresident individual~~

38 ~~without a boarding home license.~~)

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 18.20 RCW  
2 to read as follows:

3        (1) A boarding home must provide each nonresident a disclosure  
4 statement upon admission and at the time that additional services are  
5 requested by a nonresident.

6        (2) The disclosure statement shall notify the nonresident that:

7        (a) The resident rights of chapter 70.129 RCW do not apply to  
8 nonresidents;

9        (b) Licensing requirements for boarding homes under this chapter do  
10 not apply to nonresident units; and

11        (c) The jurisdiction of the long-term care ombudsman does not apply  
12 to nonresidents and nonresident units.

13        **Sec. 5.**    RCW 18.52.030 and 2000 c 93 s 6 are each amended to read  
14 as follows:

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

33        **Sec. 6.**    RCW 70.127.040 and 2003 c 275 s 3 and 2003 c 140 s 8 are  
34 each reenacted and amended to read as follows:

35        The following are not subject to regulation for the purposes of  
36 this chapter:

- 1 (1) A family member providing home health, hospice, or home care  
2 services;
- 3 (2) A person who provides only meal services in an individual's  
4 permanent or temporary residence;
- 5 (3) An individual providing home care through a direct agreement  
6 with a recipient of care in an individual's permanent or temporary  
7 residence;
- 8 (4) A person furnishing or delivering home medical supplies or  
9 equipment that does not involve the provision of services beyond those  
10 necessary to deliver, set up, and monitor the proper functioning of the  
11 equipment and educate the user on its proper use;
- 12 (5) A person who provides services through a contract with a  
13 licensed agency;
- 14 (6) An employee or volunteer of a licensed agency who provides  
15 services only as an employee or volunteer;
- 16 (7) Facilities and institutions, including but not limited to  
17 nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41  
18 RCW, adult family homes under chapter 70.128 RCW, boarding homes under  
19 chapter 18.20 RCW, developmental disability residential programs under  
20 chapter 71A.12 RCW, other entities licensed under chapter 71.12 RCW, or  
21 other licensed facilities and institutions, only when providing  
22 services to persons residing within the facility or institution;
- 23 (8) Local and combined city-county health departments providing  
24 services under chapters 70.05 and 70.08 RCW;
- 25 (9) An individual providing care to ill individuals, (~~((disabled))~~)  
26 individuals with disabilities, or vulnerable individuals through a  
27 contract with the department of social and health services;
- 28 (10) Nursing homes, hospitals, or other institutions, agencies,  
29 organizations, or persons that contract with licensed home health,  
30 hospice, or home care agencies for the delivery of services;
- 31 (11) In-home assessments of an ill individual, (~~((disabled))~~) an  
32 individual with a disability, or a vulnerable individual that does not  
33 result in regular ongoing care at home;
- 34 (12) Services conducted by and for the adherents of a church or  
35 religious denomination that rely upon spiritual means alone through  
36 prayer for healing in accordance with the tenets and practices of such  
37 church or religious denomination and the bona fide religious beliefs  
38 genuinely held by such adherents;

1 (13) A medicare-approved dialysis center operating a medicare-  
2 approved home dialysis program;

3 (14) A person providing case management services. For the purposes  
4 of this subsection, "case management" means the assessment,  
5 coordination, authorization, planning, training, and monitoring of home  
6 health, hospice, and home care, and does not include the direct  
7 provision of care to an individual;

8 (15) Pharmacies licensed under RCW 18.64.043 that deliver  
9 prescription drugs and durable medical equipment that does not involve  
10 the use of professional services beyond those authorized to be  
11 performed by licensed pharmacists pursuant to chapter 18.64 RCW and  
12 those necessary to set up and monitor the proper functioning of the  
13 equipment and educate the person on its proper use;

14 (16) A volunteer hospice complying with the requirements of RCW  
15 70.127.050; (~~and~~)

16 (17) A person who provides home care services without compensation;  
17 and

18 (18) Nursing homes that provide telephone or web-based transitional  
19 care management services.

20 NEW SECTION. Sec. 7. A new section is added to chapter 74.42 RCW  
21 to read as follows:

22 (1) Nursing facilities may provide telephone or web-based  
23 transitional care management services to persons discharged from the  
24 facility to home for up to thirty days postdischarge.

25 (2) When a nursing facility provides transitional care management  
26 services, the facility must coordinate postdischarge care and service  
27 needs with in-home agencies licensed under chapter 70.127 RCW, and  
28 other authorized care providers, to promote evidence-based transition  
29 care planning. In-home service agencies and other authorized care  
30 providers, including the department, shall, when appropriate, determine  
31 resident eligibility for postdischarge care and services and coordinate  
32 with nursing facilities to plan a safe transition of the client to the  
33 home setting. When a resident is discharged to home and is without in-  
34 home care or services due to the resident's refusal of care or their  
35 ineligibility for care, the nursing facility may provide telephone or  
36 web-based transitional care management services. These services may  
37 include care coordination services, review of the discharge plan,

1 instructions to promote compliance with the discharge plan, reminders  
2 or assistance with scheduling follow-up appointments with other health  
3 care professionals consistent with the discharge plan, and promotion of  
4 self-management of the client's health condition. Web-based transition  
5 care services may include patient education and the provision of  
6 services described in this section. They are not intended to include  
7 telehealth monitoring.

8 (3) If the nursing facility identifies concerns in client care that  
9 result from telephone or web-based transitional care management  
10 services, the nursing facility will notify the client's primary care  
11 physician. The nursing facility will also discuss with the client  
12 options for care or other services which may include in-home services  
13 provided by agencies licensed under chapter 70.127 RCW.

14 NEW SECTION. **Sec. 8.** The department of social and health services  
15 shall convene a work group of stakeholders to discuss and identify one  
16 or more mechanisms to incentivize nursing facilities to close or to  
17 eliminate licensed beds from active service. The department shall  
18 adopt rules to implement the recommendations of the work group. By  
19 September 1, 2011, the department shall report to the governor and the  
20 legislature on the recommendations of the work group and the status of  
21 the department's rule-making efforts and any statutory impediments to  
22 the implementation of any of the recommendations.

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