

HOUSE BILL REPORT

E2SHB 1727

As Passed House:
March 11, 2013

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: House Committee on Appropriations (originally sponsored by Representatives Morrell, Green, Walsh, Ryu, Appleton, Tharinger and Pollet).

Brief History:

Committee Activity:

Health Care & Wellness: 2/19/13, 2/22/13 [DPS];
Appropriations: 2/28/13 [DP2S(w/o sub HCW)].

Floor Activity:

Passed House: 3/11/13, 61-37.

Brief Summary of Engrossed Second Substitute Bill

- Authorizes assisted living facilities to provide continuing nursing services to complex residents upon receiving designation by the Department of Social and Health Services.
- 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.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Cody, Chair; Jinkins, Vice Chair; Schmick, Ranking Member; Clibborn, Green, Manweller, Moeller, Morrell, Riccelli, Ross, Short, Tharinger and Van De Wege.

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.

Minority Report: Do not pass. Signed by 3 members: Representatives Hope, Assistant Ranking Minority Member; Angel and Rodne.

Staff: Chris Blake (786-7392).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 20 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Fagan, Green, Haigh, Hudgins, Hunt, Jinkins, Kagi, Maxwell, Morrell, Pedersen, Pettigrew, Ross, Seaquist, Springer and Sullivan.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dahlquist, Haler, Harris, Parker, Pike, Schmick and Taylor.

Staff: James Kettel (786-7123).

Background:

Types of Residential Long-Term Care Facilities.

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), assisted living facilities, 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.

Assisted Living Facilities. Assisted living facilities are community-based residences 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 community-based residences 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.

Services at Assisted Living Facilities.

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.

Summary of Engrossed Second Substitute Bill:

Assisted living facilities may obtain a designation from the Department of Social and Health Services (Department) to provide continuing nursing services to meet the needs of complex residents. 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. Designated assisted living facilities that elect to provide such services must observe the overall functioning of residents receiving these services and respond to any physical, mental, or emotional changes that exceed the facility's capabilities.

To become designated, an assisted living facility must demonstrate that it can meet the nursing-related needs of residents. When considering applications, the Department must assess the experience of the applicant and the applicant's history of compliance in operating long-term care facilities. The Department must also inspect the designated assisted living facility every 18 months. Prior to receiving a designation, applicants must pay a fee to the Department to defray the costs of the designation program.

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.

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. Assisted living facilities must assure that sufficient and appropriately qualified staff are available to provide care and services to residents.

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 continuous nursing services has reason to believe that a resident needs continuous nursing services or rehabilitative therapy services, the facility must provide a Department-approved notice to the resident and appropriate representatives of the resident. 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 who choose to use other benefits may contract for nursing or rehabilitative services through an outside health care provider or from the assisted living facility. It is a violation of the Consumer Protection Act to fail to provide the notice and charge the resident for nursing or rehabilitative services.

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. 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.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 12, 2013.

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

Staff Summary of Public Testimony (Health Care & Wellness):

(In support) This bill provides a way for people who need more frequent services to age in place instead of going to a nursing home. There is going to be a larger population of elderly people in Washington and they need to have a place where they are taken care of and safe. Long-term care continues to evolve and what might have worked five years ago might not work now. There has been a trend toward higher acuity residents having shorter stays at nursing homes and other settings have to be prepared to take care of them. This bill provides a clear path for assisted living facilities to voluntarily care for higher acuity residents. This bill gives residents the choice to age in place for as long as possible. This bill brings clarity for case managers when referring higher acuity clients into community settings. The goal of this bill is to give consumers more choices about where they receive their care and to allow assisted living facilities to age in place.

(With concerns) The bill does not define "extensive and continuing nursing services" and it should have some parameters instead of leaving it to the Department of Social and Health Services. Residents may not realize that they have a choice in either using a home health agency or a home health nurse employed by the assisted living facility.

(Opposed) Home health agencies have worked in assisted living facilities for many years to help those residents age in place. This bill conflicts with existing home health licensing laws, and could limit residents' access to Medicare benefits for home health. Assisted living facilities will charge the patients directly for these services which will not be covered by Medicare or Medicaid. This bill is a request by assisted living facilities to become nursing homes. The term "extensive and continuing nursing services" is essentially the same definition as skilled nursing services and there is no ceiling for this care. Regulations for nursing homes have evolved over the years to provide assurances for safety, but this bill does not have adequate parameters. This bill does not have provisions about medication

administration, storage of drugs, and rehabilitation services to meet the needs of higher acuity residents. There are smaller fixes that can be made without opening this Pandora's Box. This bill represents a major policy shift and there has been no vetting of this bill with advocates and consumers. While aging in place is important, it should be done safely.

Staff Summary of Public Testimony (Appropriations):

(In support) Allowing an individual to continue living in his or her current location, despite changes in care needs, is important. This is commonly known as aging-in-place. Under this bill, assisted living facilities would have the option of caring for higher acuity clients, which would give more individuals the opportunity to age-in-place. It is difficult to predict how many facilities will pursue the designation to care for higher acuity clients. If too few facilities opt into the new program, then the fee would likely become higher than what is showing in the fiscal note. It is possible that the fee could become high enough to discourage facilities from participating in the program. The committee should consider an amendment to ensure collaboration between the Department of Social and Health Services and stakeholders when oversight standards are established for the designation program, and also to ensure that appropriate safeguards are in place for increasingly fragile residents.

(Opposed) None.

Persons Testifying (Health Care & Wellness): (In support) Representative Morrell, prime sponsor; Scott Sigmon, Leading Age Washington; and Tommy Tomlinson, Legacy House.

(With concerns) Melissa Johnson, Washington State Nurses Association.

(Opposed) Leslie Emerick, Home Care Association of Washington and Washington State Hospice and Palliative Care Organization; and Jeff Crollard, Office of the Long-Term Care Ombudsman.

Persons Testifying (Appropriations): Representative Morrell, prime sponsor; Scott Sigmon, Leading Age Washington; Leslie Emerick, Home Care Association of Washington; and Patricia Hunter, State Long-Term Care Ombudsman Program.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.