
SENATE BILL 6807

State of Washington 60th Legislature 2008 Regular Session

By Senators Kastama, Keiser, Fairley, and Kohl-Welles

Read first time 01/24/08. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to discharge of long-term care residents; amending
2 RCW 74.42.450 and 70.129.110; and adding a new section to chapter 18.20
3 RCW.

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

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

7 (1) A boarding home's voluntary withdrawal from participation in
8 the medicaid program for residential care and services, while
9 continuing to provide services of the type provided by boarding homes,
10 is not an acceptable basis for the transfer or discharge of persons who
11 were residing in the boarding home on the day before the effective date
12 of the withdrawal.

13 (a) The persons who are protected from transfer or discharge after
14 the boarding home's withdrawal from participation in the medicaid
15 program include persons who were residing in the boarding home on the
16 day before the effective date of the withdrawal but who were not yet
17 entitled to medicaid assistance on that date.

18 (b) The provisions of this section continue to apply to persons who

1 were residing in the boarding home on the day before the effective date
2 of the withdrawal until the date of their transfer or discharge from
3 the facility.

4 (2)(a) A boarding home that voluntarily withdraws from
5 participation in the medicaid program for residential care and services
6 must provide notice to any person who begins residence in the boarding
7 home on or after the effective date of the medicaid withdrawal that:

8 (i) The boarding home will not participate in the medicaid program
9 with respect to that person; and

10 (ii) The boarding home may transfer or discharge the person,
11 following notice, if the person is unable to pay the charges of the
12 facility, even if the person becomes eligible for medicaid assistance
13 for boarding home services while residing at the boarding home.

14 (b) The boarding home shall provide notice orally and in writing in
15 a prominent manner on a separate page before the person begins
16 residence, and must obtain the person's signed, written acknowledgement
17 of receipt of the information.

18 (c) Nothing in this subsection shall be construed as affecting any
19 requirement that a boarding home provide advance notice to the
20 department of its intention to voluntarily terminate the facility's
21 medicaid contract with the department.

22 (3) Notwithstanding any other provision of this section, a medicaid
23 contract between the department and a boarding home is deemed to
24 continue in effect after the effective date of the facility's voluntary
25 withdrawal from participation in the medicaid program for purposes of:

26 (a) Receiving payments under the medicaid program for boarding home
27 services provided to persons who were residing in the boarding home on
28 the day before the effective date of the withdrawal;

29 (b) Maintaining compliance with all requirements of the medicaid
30 contract between the department and the facility; and

31 (c) Continuing to apply the oversight and enforcement authority
32 provided under the department's contract, regulations, and the law.

33 **Sec. 2.** RCW 74.42.450 and 1997 c 392 s 216 are each amended to
34 read as follows:

35 (1) The facility shall admit as residents only those individuals
36 whose needs can be met by:

37 (a) The facility;

1 (b) The facility cooperating with community resources; or

2 (c) The facility cooperating with other providers of care
3 affiliated or under contract with the facility.

4 (2) The facility shall transfer a resident to a hospital or other
5 appropriate facility when a change occurs in the resident's physical or
6 mental condition that requires care or service that the facility cannot
7 provide. The resident, the resident's guardian, if any, the resident's
8 next of kin, the attending physician, and the department shall be
9 consulted at least fifteen days before a transfer or discharge unless
10 the resident is transferred under emergency circumstances. The
11 department shall use casework services or other means to insure that
12 adequate arrangements are made to meet the resident's needs.

13 (3) A resident shall be transferred or discharged only for medical
14 reasons, the resident's welfare or request, the welfare of other
15 residents, or nonpayment. A resident may not be discharged for
16 nonpayment if the discharge would be prohibited by the medicaid
17 program.

18 (4) If a resident chooses to remain in the nursing facility, the
19 department shall respect that choice, provided that if the resident is
20 a medicaid recipient, the resident continues to require a nursing
21 facility level of care.

22 (5) If the department determines that a resident no longer requires
23 a nursing facility level of care, the resident shall not be discharged
24 from the nursing facility until at least thirty days after written
25 notice is given to the resident, the resident's surrogate decision
26 maker and, if appropriate, a family member or the resident's
27 representative. A form for requesting a hearing to appeal the
28 discharge decision shall be attached to the written notice. The
29 written notice shall include at least the following:

30 (a) The reason for the discharge;

31 (b) A statement that the resident has the right to appeal the
32 discharge; and

33 (c) The name, address, and telephone number of the state long-term
34 care ombudsman.

35 (6) If the resident appeals a department discharge decision, the
36 resident shall not be discharged without the resident's consent until
37 at least thirty days after a final order is entered upholding the
38 decision to discharge the resident.

1 (7) Before the facility transfers or discharges a resident, the
2 facility must first attempt through reasonable accommodations to avoid
3 the transfer or discharge unless the transfer or discharge is agreed to
4 by the resident. The facility shall admit or retain only individuals
5 whose needs it can safely and appropriately serve in the facility with
6 available staff or through the provision of reasonable accommodations
7 required by state or federal law. "Reasonable accommodations" has the
8 meaning given to this term under the federal Americans with
9 disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other
10 applicable federal or state antidiscrimination laws and regulations.

11 (8) If a resident is transferred or discharged by the facility for
12 treatment in a hospital and is subsequently cleared for readmittance to
13 the facility by a physician, the facility shall readmit the resident to
14 the first available gender-appropriate bed. If the facility thereafter
15 issues a notice of transfer or discharge stating the facility is no
16 longer able to meet the resident's needs following the resident's
17 hospital stay, the resident is entitled to contest the proposed
18 transfer or discharge in a fair hearing, provided the resident or
19 resident's representative files a request for an administrative hearing
20 with the office of administrative hearings within ten days of receipt
21 of the notice of transfer or discharge.

22 **Sec. 3.** RCW 70.129.110 and 1997 c 392 s 205 are each amended to
23 read as follows:

24 (1) The facility must permit each resident to remain in the
25 facility, and not transfer or discharge the resident from the facility
26 unless:

27 (a) The transfer or discharge is necessary for the resident's
28 welfare and the resident's needs cannot be met in the facility;

29 (b) The safety of individuals in the facility is endangered;

30 (c) The health of individuals in the facility would otherwise be
31 endangered;

32 (d) The resident has failed to make the required payment for his or
33 her stay; or

34 (e) The facility ceases to operate.

35 (2) All long-term care facilities shall fully disclose to potential
36 residents or their legal representative the service capabilities of the
37 facility prior to admission to the facility. If the care needs of the

1 applicant who is medicaid eligible are in excess of the facility's
2 service capabilities, the department shall identify other care settings
3 or residential care options consistent with federal law.

4 (3) Before a long-term care facility transfers or discharges a
5 resident, the facility must:

6 (a) First attempt through reasonable accommodations to avoid the
7 transfer or discharge, unless agreed to by the resident;

8 (b) Notify the resident and representative and make a reasonable
9 effort to notify, if known, an interested family member of the transfer
10 or discharge and the reasons for the move in writing and in a language
11 and manner they understand;

12 (c) Record the reasons in the resident's record; and

13 (d) Include in the notice the items described in subsection (5) of
14 this section.

15 (4)(a) Except when specified in this subsection, the notice of
16 transfer or discharge required under subsection (3) of this section
17 must be made by the facility at least thirty days before the resident
18 is transferred or discharged.

19 (b) Notice may be made as soon as practicable before transfer or
20 discharge when:

21 (i) The safety of individuals in the facility would be endangered;

22 (ii) The health of individuals in the facility would be endangered;

23 (iii) An immediate transfer or discharge is required by the
24 resident's urgent medical needs; or

25 (iv) A resident has not resided in the facility for thirty days.

26 (5) The written notice specified in subsection (3) of this section
27 must include the following:

28 (a) The reason for transfer or discharge;

29 (b) The effective date of transfer or discharge;

30 (c) The location to which the resident is transferred or
31 discharged;

32 (d) The name, address, and telephone number of the state long-term
33 care ombudsman;

34 (e) For residents with developmental disabilities, the mailing
35 address and telephone number of the agency responsible for the
36 protection and advocacy of ~~((developmentally disabled individuals))~~
37 persons who are developmentally disabled established under part C of
38 the developmental disabilities assistance and bill of rights act; and

1 (f) For residents who are mentally ill, the mailing address and
2 telephone number of the agency responsible for the protection and
3 advocacy of (~~mentally ill individuals~~) persons with a mental illness
4 established under the protection and advocacy for mentally ill
5 individuals act.

6 (6) A facility must provide sufficient preparation and orientation
7 to residents to ensure safe and orderly transfer or discharge from the
8 facility.

9 (7) A resident discharged in violation of this section has the
10 right to be readmitted immediately upon the first availability of a
11 gender-appropriate bed in the facility.

12 (8) If a resident is transferred or discharged by the facility for
13 treatment in a hospital and is subsequently cleared for readmittance to
14 the facility by a physician, the facility shall readmit the resident to
15 the first available gender-appropriate bed. If the facility thereafter
16 issues a notice of transfer or discharge stating the facility is no
17 longer able to meet the resident's needs following the resident's
18 hospital stay, the resident is entitled to contest the proposed
19 transfer or discharge in a fair hearing, provided the resident or
20 resident's representative files a request for an administrative hearing
21 with the office of administrative hearings within ten days of receipt
22 of the notice of transfer or discharge.

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