CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1218**

Chapter 159, Laws of 2021

67th Legislature

2021 Regular Session

LONG-TERM CARE FACILITIES—VARIOUS PROVISIONS

EFFECTIVE DATE: July 25, 2021

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| Passed by the House April 20, 2021  Yeas 96 Nays 2  LAURIE JINKINS  **Speaker of the House of Representatives**  Passed by the Senate April 10, 2021  Yeas 27 Nays 21  DENNY HECK  **President of the Senate** | CERTIFICATE  I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1218** as passed by the House of Representatives and the Senate on the dates hereon set forth.  BERNARD DEAN  Chief Clerk |
| Approved May 3, 2021 2:13 PM | May 3, 2021 |
| JAY INSLEE  **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**SUBSTITUTE HOUSE BILL 1218**

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AS AMENDED BY THE SENATE

Passed Legislature - 2021 Regular Session

**State of Washington 67th Legislature 2021 Regular Session**

**By** House 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)

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; amending RCW 18.51.009, 18.51.260, 74.42.420, 74.42.460, 70.129.020, 70.129.030, 70.129.040, 70.129.080, 70.129.090, 70.129.110, 70.129.150, and 70.129.180; reenacting and amending RCW 70.129.010; adding new sections to chapter 18.20 RCW; adding new sections to chapter 18.51 RCW; adding new sections to chapter 70.97 RCW; adding new sections to chapter 70.128 RCW; adding new sections to chapter 70.129 RCW; adding a new section to chapter 70.01 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that:

(1) Residents in licensed long-term care facilities have been disproportionately impacted and isolated by the COVID-19 pandemic and over 50 percent of all COVID-19 deaths in Washington have been associated with long-term care facilities;

(2) According to a University of Washington report, social isolation creates a "double pandemic" that disrupts care and exacerbates the difficulties of dementia, depression, suicide risk, chronic health conditions, and other challenges faced by long-term care residents and providers;

(3) A "digital divide" exists in many parts of Washington, particularly for older adults of color with low incomes and those in rural communities;

(4) Residents with sensory limitations, mental illness, intellectual disabilities, dementia, cognitive limitations, traumatic brain injuries, or other disabilities may not be able to fully utilize digital tools which exacerbates their social isolation;

(5) Long-term care facilities already have the legal responsibility to care for their residents in a manner and in an environment that promotes the maintenance or enhancement of each resident's quality of life. A resident should have a safe, clean, comfortable, and homelike environment as detailed in chapter 70.129 RCW; and

(6) The COVID-19 pandemic has exposed systematic weaknesses in the state's long-term care system and there is a need to enact additional measures to protect and improve the health, safety, and quality of life of residents.

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

The department must require an assisted living facility that is subject to a stop placement order or limited stop placement order under RCW 18.20.190 to publicly post in a conspicuous place at the facility a standardized notice that the department has issued a stop placement order or limited stop placement order for the facility. The standardized notice shall be developed by the department to include the date of the stop placement order or limited stop placement order, any conditions placed upon the facility's license, contact information for the department, contact information for the administrator or provider of the assisted living facility, and a statement that anyone may contact the department or the administrator or provider for further information. The notice must remain posted until the department has terminated the stop placement order or limited stop placement order.

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

(1) The department shall require each assisted living facility to:

(a) Create and regularly maintain a current resident roster containing the name and room number of each resident and provide a written copy immediately upon an in-person request from any long-term care ombuds;

(b) Create and regularly maintain current, accurate, and aggregated contact information for all residents, including contact information for the resident representative, if any, of each resident. The contact information for each resident must include the resident's name, room number, and, if available, telephone number and email address. The contact information for each resident representative must include the resident representative's name, relationship to the resident, phone number, and, if available, email and mailing address;

(c) Record and update the aggregated contact information required by this section, upon receipt of new or updated contact information from the resident or resident representative; and

(d) Upon the written request of any long-term care ombuds that includes reference to this section and the relevant legal functions and duties of long-term care ombuds, provide a copy of the aggregated contact information required by this section within 48 hours, or within a reasonable time if agreed to by the requesting long-term care ombuds by electronic copy to the secure email address or facsimile number provided in the written request.

(2) In accordance with the federal older Americans act, federal regulations, and state laws that govern the state long-term care ombuds program, the department shall inform assisted living facilities that:

(a) Any long-term care ombuds is authorized to request and obtain from assisted living facilities the information required by this section in order to perform the functions and duties of long-term care ombuds as set forth in federal and state laws;

(b) The state long-term care ombuds program and all long-term care ombuds are considered a "health oversight agency," so that the federal health insurance portability and accountability act and chapter 70.02 RCW do not preclude assisted living facilities from providing the information required by this section when requested by any long-term care ombuds, and pursuant to these laws, the federal older Americans act, federal regulations, and state laws that govern the state long-term care ombuds program, facilities are not required to seek or obtain consent from residents or resident representatives prior to providing the information required by this section in accordance with the requirements of this section;

(c) The information required by this section, when provided by an assisted living facility to a requesting long-term care ombuds, becomes property of the state long-term care ombuds program and is subject to all state and federal laws governing the confidentiality and disclosure of the files, records, and information maintained by the state long-term care ombuds program or any local long-term care ombuds entity; and

(d) The assisted living facility may not refuse to provide or unreasonably delay providing the resident roster, the contact information for a resident or resident representative, or the aggregated contact information required by this section on any basis, including on the basis that the facility must first seek or obtain consent from one or more of the residents or resident representatives.

(3) Nothing in this section shall interfere with or diminish the authority of any long-term care ombuds to access facilities, residents, and resident records as otherwise authorized by law.

(4) For the purposes of this section, "resident representative" has the same meaning as in RCW 70.129.010.

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

(1) Each assisted living facility shall be responsive to incoming communications and respond within a reasonable time to phone and electronic messages.

(2) Each assisted living facility must have a communication system, including a sufficient quantity of working telephones and other communication equipment, to ensure that residents have 24-hour access to communications with family, medical providers, and others, and also to allow for emergency contact to and from facility staff. The telephones and communication equipment must provide for auditory privacy, not be located in a staff office or station, be accessible and usable by persons with hearing loss and other disabilities, and not require payment for local calls. An assisted living facility is not required to provide telephones at no cost in each resident room.

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

(1) Each assisted living facility shall develop and maintain a comprehensive disaster preparedness plan to be followed in the event of a disaster or emergency, including fires, earthquakes, floods, infectious disease outbreaks, loss of power or water, and other events that may require sheltering in place, evacuations, or other emergency measures to protect the health and safety of residents. The facility shall review the comprehensive disaster preparedness plan annually, update the plan as needed, and train all employees when they begin work in the facility on the comprehensive disaster preparedness plan and related staff procedures.

(2) The department shall adopt rules governing the comprehensive disaster preparedness plan. At a minimum, the rules must address: Timely communication with the residents' emergency contacts; timely communication with state and local agencies, long-term care ombuds, and developmental disabilities ombuds; contacting and requesting emergency assistance; on-duty employees' responsibilities; meeting residents' essential needs; procedures to identify and locate residents; and procedures to provide emergency information to provide for the health and safety of residents. In addition, the rules shall establish standards for maintaining personal protective equipment and infection control capabilities, as well as department inspection procedures with respect to the plans.

**Sec.**  RCW 18.51.009 and 1994 c 214 s 22 are each amended to read as follows:

RCW 70.129.007, 70.129.105, ((~~and~~)) 70.129.150 through 70.129.170, and section 20 of this act apply to this chapter and persons regulated under this chapter.

**Sec.**  RCW 18.51.260 and 1987 c 476 s 26 are each amended to read as follows:

(1) Each citation for a violation specified in RCW 18.51.060 which is issued pursuant to this section ((~~and which has become final~~)), or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the director, until the violation is corrected to the satisfaction of the department up to a maximum of one hundred twenty days. The citation or copy shall be posted in a place or places in plain view of the patients in the nursing home, persons visiting those patients, and persons who inquire about placement in the facility.

(2) The department shall require a nursing home that is subject to a stop placement order or limited stop placement order under RCW 18.51.060 to publicly post in a conspicuous place at the nursing home a standardized notice that the department has issued a stop placement order or limited stop placement order for the nursing home. The standardized notice shall be developed by the department to include the date of the stop placement order or limited stop placement order, any conditions placed upon the nursing home's license, contact information for the department, contact information for the administrator or provider of the nursing home, and a statement that anyone may contact the department or the administrator or provider for further information. The notice must remain posted until the department has terminated the stop placement order or limited stop placement order.

NEW SECTION. **Sec.**  A new section is added to chapter 18.51 RCW to read as follows:

(1) The department shall require each nursing home to:

(a) Create and regularly maintain a current resident roster containing the name and room number of each resident and provide a written copy immediately upon an in-person request from any long-term care ombuds;

(b) Create and regularly maintain current, accurate, and aggregated contact information for all residents, including contact information for the resident representative, if any, of each resident. The contact information for each resident must include the resident's name, room number, and, if available, telephone number and email address. The contact information for each resident representative must include the resident representative's name, relationship to the resident, phone number, and, if available, email and mailing address;

(c) Record and update the aggregated contact information required by this section, upon receipt of new or updated contact information from the resident or resident representative; and

(d) Upon the written request of any long-term care ombuds that includes reference to this section and the relevant legal functions and duties of long-term care ombuds, provide a copy of the aggregated contact information required by this section within 48 hours, or within a reasonable time if agreed to by the requesting long-term care ombuds, by electronic copy to the secure email address or facsimile number provided in the written request.

(2) In accordance with the federal older Americans act, federal regulations, and state laws that govern the state long-term care ombuds program, the department shall inform nursing homes that:

(a) Any long-term care ombuds is authorized to request and obtain from nursing homes the information required by this section in order to perform the functions and duties of long-term care ombuds as set forth in federal and state laws;

(b) The state long-term care ombuds program and all long-term care ombuds are considered a "health oversight agency," so that the federal health insurance portability and accountability act and chapter 70.02 RCW do not preclude nursing homes from providing the information required by this section when requested by any long-term care ombuds, and pursuant to these laws, the federal older Americans act, federal regulations, and state laws that govern the state long-term care ombuds program, nursing homes are not required to seek or obtain consent from residents or resident representatives prior to providing the information required by this section in accordance with the requirements of this section;

(c) The information required by this section, when provided by a nursing home to a requesting long-term care ombuds, becomes property of the state long-term care ombuds program and is subject to all state and federal laws governing the confidentiality and disclosure of the files, records, and information maintained by the state long-term care ombuds program or any local long-term care ombuds entity; and

(d) The nursing home may not refuse to provide or unreasonably delay providing the resident roster, the contact information for a resident or resident representative, or the aggregated contact information required by this section, on any basis, including on the basis that the nursing home must first seek or obtain consent from one or more of the residents or resident representatives.

(3) Nothing in this section shall interfere with or diminish the authority of any long-term care ombuds to access nursing homes, residents, and resident records as otherwise authorized by law.

(4) For the purposes of this section, "resident representative" has the same meaning as in RCW 70.129.010.

NEW SECTION. **Sec.**  A new section is added to chapter 18.51 RCW to read as follows:

(1) Each nursing home must be responsive to incoming communications and respond within a reasonable time to phone and electronic messages.

(2) Each nursing home must have a communication system, including a sufficient quantity of working telephones and other communication equipment to ensure that residents have 24-hour access to communications with family, medical providers, and others, and also to allow for emergency contact to and from facility staff. The telephones and communication equipment must provide for auditory privacy, not be located in a staff office or station, be accessible and usable by persons with hearing loss and other disabilities, and not require payment for local calls. A nursing home is not required to provide telephones at no cost in each resident room.

**Sec.**  RCW 74.42.420 and 1979 ex.s. c 211 s 42 are each amended to read as follows:

The facility shall maintain an organized record system containing a record for each resident. The record shall contain:

(1) Identification information, including the information listed in section 8(1) of this act;

(2) Admission information, including the resident's medical and social history;

(3) A comprehensive plan of care and subsequent changes to the comprehensive plan of care;

(4) Copies of initial and subsequent periodic examinations, assessments, evaluations, and progress notes made by the facility and the department;

(5) Descriptions of all treatments, services, and medications provided for the resident since the resident's admission;

(6) Information about all illnesses and injuries including information about the date, time, and action taken; and

(7) A discharge summary.

Resident records shall be available to the staff members directly involved with the resident and to appropriate representatives of the department. The facility shall protect resident records against destruction, loss, and unauthorized use. The facility shall keep a resident's record after the resident is discharged as provided in RCW 18.51.300.

NEW SECTION. **Sec.**  A new section is added to chapter 18.51 RCW to read as follows:

(1) Each nursing home shall develop and maintain a comprehensive disaster preparedness plan to be followed in the event of a disaster or emergency, including fires, earthquakes, floods, infectious disease outbreaks, loss of power or water, and other events that may require sheltering in place, evacuations, or other emergency measures to protect the health and safety of residents. The nursing home shall review the comprehensive disaster preparedness plan annually, update the plan as needed, and train all employees when they begin work in the nursing home on the comprehensive disaster preparedness plan and related staff procedures.

(2) The department shall adopt rules governing the comprehensive disaster preparedness plan. At a minimum, the rules must address the following if not already adequately addressed by federal requirements for emergency planning: Timely communication with the residents' emergency contacts; timely communication with state and local agencies, long-term care ombuds, and developmental disabilities ombuds; contacting and requesting emergency assistance; on-duty employees' responsibilities; meeting residents' essential needs; procedures to identify and locate residents; and procedures to provide emergency information to provide for the health and safety of residents. In addition, the rules shall establish standards for maintaining personal protective equipment and infection control capabilities, as well as department inspection procedures with respect to the plans.

**Sec.**  RCW 74.42.460 and 1979 ex.s. c 211 s 46 are each amended to read as follows:

The facility shall have a written staff organization plan and detailed written procedures to meet potential emergencies and disasters. The facility shall clearly communicate and periodically review the plan and procedures with the staff and residents. The plan and procedures shall be posted at suitable locations throughout the facility. The planning requirement of this section shall complement the comprehensive disaster preparedness planning requirement of section 11 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 70.97 RCW to read as follows:

The department shall require an enhanced services facility that is subject to a stop placement order or limited stop placement order under RCW 70.97.110 to publicly post in a conspicuous place at the facility a standardized notice that the department has issued a stop placement order or limited stop placement order for the facility. The standardized notice shall be developed by the department to include the date of the stop placement order or limited stop placement order, any conditions placed upon the facility's license, contact information for the department, contact information for the administrator or provider of the facility, and a statement that anyone may contact the department or the administrator or provider for further information. The notice must remain posted until the department has terminated the stop placement order or limited stop placement order.

NEW SECTION. **Sec.**  A new section is added to chapter 70.97 RCW to read as follows:

(1) The department shall require each enhanced services facility to:

(a) Create and regularly maintain a current resident roster containing the name and room number of each resident and provide a written copy immediately upon an in-person request from any long-term care ombuds;

(b) Create and regularly maintain current, accurate, and aggregated contact information for all residents, including contact information for the resident representative, if any, of each resident. The contact information for each resident must include the resident's name, room number, and, if available, telephone number and email address. The contact information for each resident representative must include the resident representative's name, relationship to the resident, phone number, and, if available, email and mailing address;

(c) Record and update the aggregated contact information required by this section, upon receipt of new or updated contact information from the resident or resident representative; and

(d) Upon the written request of any long-term care ombuds that includes reference to this section and the relevant legal functions and duties of long-term care ombuds, provide a copy of the aggregated contact information required by this section within 48 hours, or within a reasonable time if agreed to by the requesting long-term care ombuds, by electronic copy to the secure email address or facsimile number provided in the written request.

(2) In accordance with the federal older Americans act, federal regulations, and state laws that govern the state long-term care ombuds program, the department shall inform enhanced services facilities that:

(a) Any long-term care ombuds is authorized to request and obtain from enhanced services facilities the information required by this section in order to perform the functions and duties of long-term care ombuds as set forth in federal and state laws;

(b) The state long-term care ombuds program and all long-term care ombuds are considered a "health oversight agency," so that the federal health insurance portability and accountability act and chapter 70.02 RCW do not preclude enhanced services facilities from providing the information required by this section when requested by any long-term care ombuds, and pursuant to these laws, the federal older Americans act, federal regulations, and state laws that govern the state long-term care ombuds program, facilities are not required to seek or obtain consent from residents or resident representatives prior to providing the information required by this section in accordance with the requirements of this section;

(c) The information required by this section, when provided by an enhanced services facility to a requesting long-term care ombuds, becomes property of the state long-term care ombuds program and is subject to all state and federal laws governing the confidentiality and disclosure of the files, records, and information maintained by the state long-term care ombuds program or any local long-term care ombuds entity; and

(d) The enhanced services facility may not refuse to provide or unreasonably delay providing the resident roster, the contact information for a resident or resident representative, or the aggregated contact information required by this section, on any basis, including on the basis that the enhanced services facility must first seek or obtain consent from one or more of the residents or resident representatives.

(3) Nothing in this section shall interfere with or diminish the authority of any long-term care ombuds to access facilities, residents, and resident records as otherwise authorized by law.

(4) For the purposes of this section, "resident representative" has the same meaning as in RCW 70.129.010.

NEW SECTION. **Sec.**  A new section is added to chapter 70.97 RCW to read as follows:

(1) Each enhanced services facility must be responsive to incoming communications and respond within a reasonable time to phone and electronic messages.

(2) Each enhanced services facility must have a communication system, including a sufficient quantity of working telephones and other communication equipment to assure that residents have 24-hour access to communications with family, medical providers, and others, and also to allow for emergency contact to and from facility staff. The telephones and communication equipment must provide for auditory privacy, not be located in a staff office or station, be accessible and usable by persons with hearing loss and other disabilities, and not require payment for local calls. An enhanced services facility is not required to provide telephones at no cost in each resident room.

NEW SECTION. **Sec.**  A new section is added to chapter 70.97 RCW to read as follows:

(1) Each enhanced services facility shall develop and maintain a comprehensive disaster preparedness plan to be followed in the event of a disaster or emergency, including fires, earthquakes, floods, infectious disease outbreaks, loss of power or water, and other events that may require sheltering in place, evacuations, or other emergency measures to protect the health and safety of residents. The enhanced services facility must review the comprehensive disaster preparedness plan annually, update the plan as needed, and train all employees when they begin work in the enhanced services facility on the comprehensive disaster preparedness plan and related staff procedures.

(2) The department shall adopt rules governing the comprehensive disaster preparedness plan. At a minimum, the rules must address: Timely communication with the residents' emergency contacts; timely communication with state and local agencies, long-term care ombuds, and developmental disabilities ombuds; contacting and requesting emergency assistance; on-duty employees' responsibilities; meeting residents' essential needs; procedures to identify and locate residents; and procedures to provide emergency information to provide for the health and safety of residents. In addition, the rules shall establish standards for maintaining personal protective equipment and infection control capabilities, as well as department inspection procedures with respect to the plans.

NEW SECTION. **Sec.**  A new section is added to chapter 70.128 RCW to read as follows:

(1) The department shall require each adult family home to:

(a) Create and regularly maintain a current resident roster containing the name and room number of each resident and provide a written copy immediately upon an in-person request from any long-term care ombuds;

(b) Create and regularly maintain current, accurate, and aggregated contact information for all residents, including contact information for the resident representative, if any, of each resident. The contact information for each resident must include the resident's name, room number, and, if available, telephone number and email address. The contact information for each resident representative must include the resident representative's name, relationship to the resident, phone number, and, if available, email and mailing address;

(c) Record and update the aggregated contact information required by this section, upon receipt of new or updated contact information from the resident or resident representative; and

(d) Upon the written request of any long-term care ombuds that includes reference to this section and the relevant legal functions and duties of long-term care ombuds, provide a copy of the aggregated contact information required by this section within 48 hours, or within a reasonable time if agreed to by the requesting long-term care ombuds, by electronic copy to the secure email address or facsimile number provided in the written request.

(2) In accordance with the federal older Americans act, federal regulations, and state laws that govern the state long-term care ombuds program, the department shall inform adult family homes that:

(a) Any long-term care ombuds is authorized to request and obtain from adult family homes the information required by this section in order to perform the functions and duties of long-term care ombuds as set forth in federal and state laws;

(b) The state long-term care ombuds program and all long-term care ombuds are considered a "health oversight agency," so that the federal health insurance portability and accountability act and chapter 70.02 RCW do not preclude adult family homes from providing the information required by this section when requested by any long-term care ombuds, and pursuant to these laws, the federal older Americans act, federal regulations, and state laws that govern the state long-term care ombuds program, adult family homes are not required to seek or obtain consent from residents or resident representatives prior to providing the information required by this section in accordance with the requirements of this section;

(c) The information required by this section, when provided by an adult family home to a requesting long-term care ombuds, becomes property of the state long-term care ombuds program and is subject to all state and federal laws governing the confidentiality and disclosure of the files, records, and information maintained by the state long-term care ombuds program or any local long-term care ombuds entity; and

(d) The adult family home may not refuse to provide or unreasonably delay providing the resident roster, the contact information for a resident or resident representative, or the aggregated contact information required by this section, on any basis, including on the basis that the adult family home must first seek or obtain consent from one or more of the residents or resident representatives.

(3) Nothing in this section shall interfere with or diminish the authority of any long-term care ombuds to access facilities, residents, and resident records as otherwise authorized by law.

(4) For the purposes of this section, "resident representative" has the same meaning as in RCW 70.129.010.

NEW SECTION. **Sec.**  A new section is added to chapter 70.128 RCW to read as follows:

The department must require an adult family home that is subject to a stop placement order or limited stop placement order under RCW 70.128.160 to publicly post in a conspicuous place at the adult family home a standardized notice that the department has issued a stop placement order or limited stop placement order for the adult family home. The standardized notice shall be developed by the department to include the date of the stop placement order or limited stop placement order, any conditions placed upon the adult family home's license, contact information for the department, contact information for the administrator or provider of the adult family home, and a statement that anyone may contact the department or the administrator or provider for further information. The notice must remain posted until the department has terminated the stop placement order or limited stop placement order.

NEW SECTION. **Sec.**  A new section is added to chapter 70.129 RCW to read as follows:

The department of social and health services and the department of health, in collaboration with the state office of the long-term care ombuds and representatives of long-term care facilities, shall develop training materials to educate the leadership and staff of local health jurisdictions on the state's long-term care system. The training materials must provide information to assist local health jurisdiction personnel when establishing and enforcing public health measures in long-term care facilities and nursing homes, including:

(1) All applicable state and federal resident rights, including the due process rights of residents; and

(2) The process for local health jurisdiction personnel to report abuse and neglect in facilities and nursing homes, including during periods when visitation may be limited.

NEW SECTION. **Sec.**  A new section is added to chapter 70.129 RCW to read as follows:

(1) In circumstances in which limitations must be placed on resident visitation due to a public health emergency or other threat to the health and safety of the residents and staff of a facility or nursing home, residents must still be allowed access to an essential support person, subject to reasonable limitations on such access tailored to protecting the health and safety of essential support persons, residents, and staff.

(2) The facility or nursing home must allow private, in-person access to the resident by the essential support person in the resident's room. If the resident resides in a shared room, and the roommate, or the roommate's resident representative, if any, does not consent or the visit cannot be conducted safely in a shared room, then the facility or nursing home shall designate a substitute location in the facility or nursing home for the resident and essential support person to visit.

(3) The facility or nursing home shall develop and implement reasonable conditions on access by an essential support person tailored to protecting the health and safety of the essential support person, residents, and staff, based upon the particular public health emergency or other health or safety threat.

(4) The facility or nursing home may temporarily suspend an individual's designation as an essential support person for failure to comply with these requirements or reasonable conditions developed and implemented by the facility or nursing home that are tailored to protecting that health and safety of the essential support person, residents, and staff, based upon the particular public health emergency or other health or safety threat. Unless immediate action is necessary to prevent an imminent and serious threat to the health or safety of residents or staff, the facility or nursing home shall attempt to resolve the concerns with the essential support person and the resident prior to temporarily suspending the individual's designation as an essential support person. The suspension shall last no longer than 48 hours during which time the facility or nursing home must contact the department for guidance and must provide the essential support person:

(a) Information regarding the steps the essential support person must take to resume the visits, such as agreeing to comply with reasonable conditions tailored to protecting the health and safety of the essential support person, residents, and staff, based upon the particular public health emergency or other health or safety threat;

(b) The contact information for the long-term care ombuds program; and

(c) As appropriate, the contact information for the developmental disabilities ombuds, the agency responsible for the protection and advocacy system for individuals with developmental disabilities, and the agency responsible for the protection and advocacy system for individuals with mental illness.

(5) For the purposes of this section, "essential support person" means an individual who is:

(a) At least 18 years of age;

(b) Designated by the resident, or by the resident's representative, if the resident is determined to be incapacitated or otherwise legally incapacitated; and

(c) Necessary for the resident's emotional, mental, or physical well-being during situations that include, but are not limited to, circumstances involving compassionate care or end-of-life care, circumstances where visitation from a familiar person will assist with important continuity of care or the reduction of confusion and anxiety for residents with cognitive impairments, or other circumstances where the presence of an essential support person will prevent or reduce significant emotional distress to the resident.

**Sec.**  RCW 70.129.010 and 2020 c 278 s 13 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms.

(2) "Department" means the department of state government responsible for licensing the provider in question.

(3) "Facility" means a long-term care facility.

(4) "Long-term care facility" means a facility that is licensed or required to be licensed under chapter 18.20, 70.97, 72.36, or 70.128 RCW.

(5) "Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

(6) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations.

(7) ((~~"Representative" means a person appointed under RCW 7.70.065.~~

~~(8)~~)) "Resident" means the individual receiving services in a long-term care facility, that resident's attorney-in-fact, guardian, or other ((~~legal~~)) representative acting within the scope of their authority.

(8) "Resident representative" means:

(a)(i) A court-appointed guardian or conservator of a resident, if any;

(ii) An individual otherwise authorized by state or federal law including, but not limited to, agents under power of attorney, representative payees, and other fiduciaries, to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications; or

(iii) If there is no individual who meets the criteria under (a)(i) or (ii) of this subsection, an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications.

(b) The term "resident representative" does not include any individual described in (a) of this subsection who is affiliated with any long-term care facility or nursing home where the resident resides, or its licensee or management company, unless the affiliated individual is a family member of the resident.

**Sec.**  RCW 70.129.020 and 1994 c 214 s 3 are each amended to read as follows:

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident and assist the resident which include:

(1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States and the state of Washington.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(3) In the case of a resident adjudged incompetent by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed to act on the resident's behalf.

(4) In the case of a resident who has not been adjudged incompetent by a court of competent jurisdiction, a resident representative may exercise the resident's rights to the extent provided by law.

**Sec.**  RCW 70.129.030 and 2013 c 23 s 184 are each amended to read as follows:

(1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The notification must be made prior to or upon admission. Receipt of the information must be acknowledged in writing.

(2) The resident to the extent provided by law or ((~~his or her legal~~)) resident representative to the extent provided by law, has the right:

(a) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or portions of them upon request and two working days' advance notice to the facility.

(3) The facility shall only admit or retain individuals whose needs it can safely and appropriately serve in the facility with appropriate available staff and through the provision of reasonable accommodations required by state or federal law. Except in cases of genuine emergency, the facility shall not admit an individual before obtaining a thorough assessment of the resident's needs and preferences. The assessment shall contain, unless unavailable despite the best efforts of the facility, the resident applicant, and other interested parties, the following minimum information: Recent medical history; necessary and contraindicated medications; a licensed medical or other health professional's diagnosis, unless the individual objects for religious reasons; significant known behaviors or symptoms that may cause concern or require special care; mental illness, except where protected by confidentiality laws; level of personal care needs; activities and service preferences; and preferences regarding other issues important to the resident applicant, such as food and daily routine.

(4) The facility must inform each resident in writing in a language the resident or ((~~his or her~~)) resident representative understands before admission, and at least once every twenty-four months thereafter of: (a) Services, items, and activities customarily available in the facility or arranged for by the facility as permitted by the facility's license; (b) charges for those services, items, and activities including charges for services, items, and activities not covered by the facility's per diem rate or applicable public benefit programs; and (c) the rules of facility operations required under RCW 70.129.140(2). Each resident and ((~~his or her~~)) resident representative must be informed in writing in advance of changes in the availability or the charges for services, items, or activities, or of changes in the facility's rules. Except in emergencies, thirty days' advance notice must be given prior to the change. However, for facilities licensed for six or fewer residents, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities, then the charges for those services, items, or activities may be changed upon fourteen days' advance written notice.

(5) The facility must furnish a written description of residents rights that includes:

(a) A description of the manner of protecting personal funds, under RCW 70.129.040;

(b) A posting of names, addresses, and telephone numbers of the state survey and certification agency, the state licensure office, the state ombuds program, and the protection and advocacy systems; and

(c) A statement that the resident may file a complaint with the appropriate state licensing agency concerning alleged resident abuse, neglect, and misappropriation of resident property in the facility.

(6) Notification of changes.

(a) A facility must immediately consult with the resident's physician, and if known, make reasonable efforts to notify the ((~~resident's legal~~)) resident representative ((~~or an interested family member~~)) to the extent provided by law when there is:

(i) An accident involving the resident which requires or has the potential for requiring physician intervention;

(ii) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications).

(b) The facility must promptly notify the resident or ((~~the resident's~~)) resident representative ((~~shall make reasonable efforts to notify an interested family member, if known,~~)) when there is:

(i) A change in room or roommate assignment; or

(ii) A decision to transfer or discharge the resident from the facility.

(c) The facility must record and update the address ((~~and~~)), phone number, and any other contact information of the ((~~resident's~~)) resident representative ((~~or interested family member~~)), upon receipt of notice from them.

**Sec.**  RCW 70.129.040 and 2011 1st sp.s. c 3 s 301 are each amended to read as follows:

(1) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(2) Upon written authorization of a resident, if the facility agrees to manage the resident's personal funds, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as specified in this section.

(a) The facility must deposit a resident's personal funds in excess of one hundred dollars in an interest-bearing account or accounts that is separate from any of the facility's operating accounts, and that credits all interest earned on residents' funds to that account. In pooled accounts, there must be a separate accounting for each resident's share.

(b) The facility must maintain a resident's personal funds that do not exceed one hundred dollars in a noninterest-bearing account, interest-bearing account, or petty cash fund.

(3) The facility must establish and maintain a system that assures a full and complete and separate accounting of each resident's personal funds entrusted to the facility on the resident's behalf.

(a) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(b) The individual financial record must be available on request to the resident, or ((~~his or her legal~~)) resident representative to the extent provided by law.

(4) Upon the death of a resident with personal funds deposited with the facility, the facility must convey within thirty days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; but in the case of a resident who received long-term care services paid for by the state, the funds and accounting shall be sent to the state of Washington, department of social and health services, office of financial recovery. The department shall establish a release procedure for use for burial expenses.

(5) If any funds in excess of one hundred dollars are paid to an adult family home by the resident or ((~~a~~)) resident representative ((~~of the resident~~)), as a security deposit for performance of the resident's obligations, or as prepayment of charges beyond the first month's residency, the funds shall be deposited by the adult family home in an interest-bearing account that is separate from any of the home's operating accounts, and that credits all interest earned on the resident's funds to that account. In pooled accounts, there must be a separate accounting for each resident's share. The account or accounts shall be in a financial institution as defined by RCW ((~~30.22.041~~)) 30A.22.041, and the resident shall be notified in writing of the name, address, and location of the depository. The adult family home may not commingle resident funds from these accounts with the adult family home's funds or with the funds of any person other than another resident. The individual resident's account record shall be available upon request by the resident or ((~~the resident's~~)) resident representative to the extent provided by law.

(6) The adult family home shall provide the resident or ((~~the resident's~~)) resident representative full disclosure in writing, prior to the receipt of any funds for a deposit, security, prepaid charges, or any other fees or charges, specifying what the funds are paid for and the basis for retaining any portion of the funds if the resident dies, is hospitalized, or is transferred or discharged from the adult family home. The disclosure must be in a language that the resident or ((~~the resident's~~)) resident representative understands, and be acknowledged in writing by the resident or ((~~the resident's~~)) resident representative. The adult family home shall retain a copy of the disclosure and the acknowledgment. The adult family home may not retain funds for reasonable wear and tear by the resident or for any basis that would violate RCW 70.129.150.

(7) Funds paid by the resident or ((~~the resident's~~)) resident representative to the adult family home, which the adult family home in turn pays to a placement agency or person, shall be governed by the disclosure requirements of this section. If the resident then dies, is hospitalized, or is transferred or discharged from the adult family home, and is entitled to any refund of funds under this section or RCW 70.129.150, the adult family home shall refund the funds to the resident or ((~~the resident's~~)) resident representative to the extent provided by law, within thirty days of the resident leaving the adult family home, and may not require the resident to obtain the refund from the placement agency or person.

(8) If, during the stay of the resident, the status of the adult family home licensee or ownership is changed or transferred to another, any funds in the resident's accounts affected by the change or transfer shall simultaneously be deposited in an equivalent account or accounts by the successor or new licensee or owner, who shall promptly notify the resident or ((~~the resident's~~)) resident representative to the extent provided by law, in writing of the name, address, and location of the new depository.

(9) Because it is a matter of great public importance to protect residents who need long-term care from deceptive disclosures and unfair retention of deposits, fees, or prepaid charges by adult family homes, a violation of this section or RCW 70.129.150 shall be construed for purposes of the consumer protection act, chapter 19.86 RCW, to constitute an unfair or deceptive act or practice or an unfair method of competition in the conduct of trade or commerce. The resident's claim to any funds paid under this section shall be prior to that of any creditor of the adult family home, its owner, or licensee, even if such funds are commingled.

**Sec.**  RCW 70.129.080 and 1994 c 214 s 9 are each amended to read as follows:

The resident has the right to privacy in communications, including the right to:

(1) Send and promptly receive mail that is unopened;

(2) Have access to stationery, postage, and writing implements at the resident's own expense; and

(3) Have reasonable access within a reasonable time to the use of a telephone and other communication equipment where calls can be made without being overheard.

**Sec.**  RCW 70.129.090 and 2013 c 23 s 185 are each amended to read as follows:

(1) The resident has the right and the facility must not interfere with access to any resident by the following:

(a) Any representative of the state;

(b) The resident's individual physician;

(c) The state long-term care ombuds as established under chapter 43.190 RCW;

(d) The agency responsible for the protection and advocacy system for individuals with developmental disabilities as established under part C of the developmental disabilities assistance and bill of rights act;

(e) The agency responsible for the protection and advocacy system for individuals with mental illness as established under the protection and advocacy for mentally ill individuals act;

(f) Subject to reasonable restrictions to protect the rights of others and to the resident's right to deny or withdraw consent at any time, resident representative, immediate family or other relatives of the resident, and others who are visiting with the consent of the resident;

(g) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the rehabilitation act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law.

(2) The facility must provide reasonable access to a resident by ((~~his or her~~)) the resident representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility must allow representatives of the state ombuds to examine a resident's clinical records with the permission of the resident or ((~~the resident's legal~~)) resident representative to the extent provided by law, and consistent with state and federal law.

**Sec.**  RCW 70.129.110 and 2013 c 23 s 186 are each amended to read as follows:

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

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

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

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

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

(e) The facility ceases to operate.

(2) All long-term care facilities shall fully disclose to potential residents or ((~~their legal~~)) resident representatives the service capabilities of the facility prior to admission to the facility. If the care needs of the applicant who is medicaid eligible are in excess of the facility's service capabilities, the department shall identify other care settings or residential care options consistent with federal law.

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

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

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

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

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

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

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

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

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

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

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

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

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

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

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

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under part C of the developmental disabilities assistance and bill of rights act; and

(f) For residents with mental illness, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with mental illness established under the protection and advocacy for mentally ill individuals act.

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

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

**Sec.**  RCW 70.129.150 and 1997 c 392 s 206 are each amended to read as follows:

(1) Prior to admission, all long-term care facilities or nursing facilities licensed under chapter 18.51 RCW that require payment of an admissions fee, deposit, or a minimum stay fee, by or on behalf of a person seeking admission to the long-term care facility or nursing facility, shall provide the resident, or ((~~his or her~~)) resident representative, full disclosure in writing in a language the resident or ((~~his or her~~)) resident representative understands, a statement of the amount of any admissions fees, deposits, prepaid charges, or minimum stay fees. The facility shall also disclose to the person, or ((~~his or her~~)) resident representative, the facility's advance notice or transfer requirements, prior to admission. In addition, the long-term care facility or nursing facility shall also fully disclose in writing prior to admission what portion of the deposits, admissions fees, prepaid charges, or minimum stay fees will be refunded to the resident or ((~~his or her~~)) resident representative to the extent provided by law, if the resident leaves the long-term care facility or nursing facility. Receipt of the disclosures required under this subsection must be acknowledged in writing. If the facility does not provide these disclosures, the deposits, admissions fees, prepaid charges, or minimum stay fees may not be kept by the facility. If a resident dies or is hospitalized or is transferred to another facility for more appropriate care and does not return to the original facility, the facility shall refund any deposit or charges already paid less the facility's per diem rate for the days the resident actually resided or reserved or retained a bed in the facility notwithstanding any minimum stay policy or discharge notice requirements, except that the facility may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private-pay resident's move, not to exceed five days' per diem charges, unless the resident has given advance notice in compliance with the admission agreement. All long-term care facilities or nursing facilities covered under this section are required to refund any and all refunds due the resident or ((~~his or her~~)) resident representative to the extent provided by law, within thirty days from the resident's date of discharge from the facility. Nothing in this section applies to provisions in contracts negotiated between a nursing facility or long-term care facility and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(2) Where a long-term care facility or nursing facility requires the execution of an admission contract by or on behalf of an individual seeking admission to the facility, the terms of the contract shall be consistent with the requirements of this section, and the terms of an admission contract by a long-term care facility shall be consistent with the requirements of this chapter.

**Sec.**  RCW 70.129.180 and 2009 c 489 s 1 are each amended to read as follows:

(1) A long-term care facility must fully disclose to residents the facility's policy on accepting medicaid as a payment source. The policy shall clearly state the circumstances under which the facility provides care for medicaid eligible residents and for residents who may later become eligible for medicaid.

(2) The policy under this section must be provided to residents orally and in writing prior to admission, in a language that the resident or ((~~the resident's~~)) resident representative understands. The written policy must be in type font no smaller than fourteen point and written on a page that is separate from other documents. The policy must be signed and dated by the resident or ((~~the resident's~~)) resident representative to the extent provided by law, if the resident lacks capacity. The facility must retain a copy of the disclosure. Current residents must receive a copy of the policy consistent with this section by July 26, 2009.

NEW SECTION. **Sec.**  A new section is added to chapter 70.01 RCW to read as follows:

(1) The department of health and the department of social and health services shall develop a report and guidelines on epidemic disease preparedness and response for long-term care facilities. In developing the report and guidelines, the department of health and the department of social and health services shall consult with interested stakeholders, including but not limited to:

(a) Local health jurisdictions;

(b) Advocates for consumers of long-term care;

(c) Associations representing long-term care facility providers; and

(d) The office of the state long-term care ombuds.

(2) The report must identify best practices and lessons learned about containment and mitigation strategies for controlling the spread of the infectious agent. At a minimum, the report must consider:

(a) Visitation policies that balance the psychosocial and physical health of residents;

(b) Timely and adequate access to personal protective equipment and other infection control supplies so that employees in long-term care facilities are prioritized for distribution in the event of supply shortages;

(c) Admission and discharge policies and standards; and

(d) Rapid and accurate testing to identify infectious outbreaks for:

(i) Resident cohorting and treatment;

(ii) Contact tracing purposes; and

(iii) Protecting the health and well-being of residents and employees.

(3) In developing the report, the department of health and the department of social and health services shall work with the stakeholders identified in subsection (1) of this section to:

(a) Ensure that any corresponding federal rules and guidelines take precedence over the state guidelines;

(b) Avoid conflict between federal requirements and state guidelines;

(c) Develop a timeline for implementing the guidelines and a process for communicating the guidelines to long-term care facilities, local health jurisdictions, and other interested stakeholders in a clear and timely manner;

(d) Consider options for targeting available resources towards infection control when epidemic disease outbreaks occur in long-term care facilities;

(e) Establish methods for ensuring that epidemic preparedness and response guidelines are consistently applied across all local health jurisdictions and long-term care facilities in Washington state. This may include recommendations to the legislature for any needed statutory changes;

(f) Develop a process for maintaining and updating epidemic preparedness and response guidelines as necessary; and

(g) Ensure appropriate considerations for each unique provider type.

(4) By December 1, 2021, the department of health and the department of social and health services shall provide a draft report and guidelines on COVID-19 as outlined in subsection (2) of this section to the health care committees of the legislature.

(5) By July 1, 2022, the department of health and the department of social and health services shall finalize the report and guidelines on COVID-19 and provide the report to the health care committees of the legislature.

(6) Beginning December 1, 2022, and annually thereafter, the department of health and the department of social and health services shall:

(a) Review the report and any corresponding guidelines;

(b) Make any necessary changes regarding COVID-19 and add information about any emerging epidemic of public health concern; and

(c) Provide the updated report and guidelines to the health care committees of the legislature. When providing the updated guidelines to the legislature, the department of health and the department of social and health services may include recommendations to the legislature for any needed statutory changes.

(7) For purposes of this section, "long-term care facilities" includes:

(a) Licensed skilled nursing facilities, assisted living facilities, adult family homes, and enhanced services facilities;

(b) Certified community residential services and supports; and

(c) Registered continuing care retirement communities.

**--- END ---**

Passed by the House April 20, 2021.

Passed by the Senate April 10, 2021.

Approved by the Governor May 3, 2021.

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