HOUSE BILL REPORT
HB 1908

As Reported By House Committee On:
Health Care

Title: An act relating to long-term care.

Brief Description: Modifying long-term care provisions.

Sponsors: Representatives Dyer, Cooke, Ballasiotes, Stevens, Elliot, Talcott, Cairnes, Lambert, Pelesky, Hymes, Robertson, Mielke, Carrell, Backlund and L. Thomas.

Brief History:
Committee Activity:
Health Care: 3/3/95, 3/6/95 [DPS].

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Dyer, Chairman; Backlund, Vice Chairman; Hymes, Vice Chairman; Dellwo, Ranking Minority Member; Campbell; Casada; Crouse; Kessler; Morris; Sherstad and Skinner.

Minority Report: Do not pass. Signed by 2 members: Representatives Cody, Assistant Ranking Minority Member; and Conway.

Staff: Antonio Sanchez (786-7383).

Background: The Aging and Adult Services Administration is the agency within the state Department of Social and Health Services that has management responsibility for publicly funded long-term care services such as nursing homes, chore services, Medicaid personal care, adult family homes, Community Options Program Entry System (COPES), and boarding homes. In Washington State, approximately 17,000 clients receive care in a nursing home, while 6,000 persons with disabilities live in licensed adult family homes, and approximately 18,000 are receiving some form of long-term care in their own homes.

Expenditures in state-administered, long-term care programs have increased even more rapidly over the past 10 years than the number of persons needing care. In addition, every year the state purchases a higher portion of long-term care services. After controlling for inflation, state spending on Aging and Adult Services has

doubled over the past decade and has grown twice as fast as the total state budget. Three-quarters of the growth in long-term care expenditures is due to higher costs per person served. State costs per resident have grown 63 percent in community care while the care in nursing homes have grown 88 percent.

In 1994, the Legislature directed the Department of Social and Health services to develop a plan for reviewing and reducing Aging and Adult Services expenditures to comply with the 10.3 percent growth rate permitted under Initiative 601. Currently the projected growth rate is approximately 26 percent.

Several factors contribute to this increase:

- As the nursing facility rate increases more people are eligible for Medicaid;
- The federal government has protected Medicaid spouses from impoverishment;
- Increased use of creative estate planning by seniors;
- Demographic increases in persons with disabilities.

To address this rapid growth, it has been recommended that:

- Lower cost long-term care options be expanded;
- The manner in which services are utilized and accessed be reviewed;
- Regulatory reforms be developed;
- The extent to which people can pay for their own care be identified.

Summary of Substitute Bill:

Nursing Home Census Reduction:

The Department of Social and Health Services is required to assist 1,000 nursing home eligible individuals obtain other types of care. Flexible payment rates must be defined by the department in rule. The department is allowed to authorize modified assisted living rates for nursing homes that temporarily or permanently convert bed use to modified assisted living and retain the rights to the beds. It also allows the department to authorize supplemental modified assisted living rates for nursing homes permanently de-licensing a portion of beds. The supplemental modified rate can be given to a nursing home for up to four years if it de-licenses nursing beds and converts them to assisted living units permanently.

Hospital and Acute Care Settings Discharge Planning for Long-Term Care:

The Department of Social and Health Services is required to develop and distribute long-term care resource materials and information for hospitals and other appropriate settings to provide discharge services to persons needing such services. Hospitals are required to provide friendly and appropriate information about long-term care options

to the patients or their legal representatives or family. Hospitals are required to establish discharge planning to ensure that each patient is given a full array of appropriate choices for long-term care.

Comprehensive Long-Term Care System Reform:

The Department of Social and Health Services is required to inact the intent of the 1989 long-term care reforms calling for the streamlining of bureaucratic fragmentation and facilitate the development of an integrated long-term care system based on functional disability.

The Joint Committee on Health Systems will develop a plan that will:

- Reduce and reorganize the long-term care bureaucracy by consolidating the administration of all categorical chronic long-term care services;
- Implement a streamlined client-centered long-term care delivery system based on functional disability;
- Facilitate greater participation in long-term care administration by local communities, appropriately relying on families and community volunteers;
- Seek alternative funding sources and the use of long-term care insurance;
- Implement a case mix reimbursement system for nursing homes;
- Separate federal Older Americans Act funds and ask that the administration of the funds be separated from Aging and Adult Services;
- Review Senior Services Act funds to identify whether the funds are being used for the most disabled elderly.

The Joint Committee on Health Systems oversight, if enacted, or the legislative budget committee if not enacted, is required to develop a working plan for implementing log-term care systems reforms by December 12, 1995. The specific requirements for the plan are detailed.

New Definitions:

New definitions are added that include "cost effective care" to mean care which is necessary to enable an individual to achieve his or her highest practicable level of physical, mental and psychosocial well-being, in an environment which is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

A new definition for "modified assisted living" is also added to mean services provided by a boarding home which has a contract with the Department of Social and Health Services. Modified assisted living is added to home and community services and does not require architectural modifications.

Quality Improvements:

The department is required to implement a quality improvement system for long-term care services guided by principles of consumer-centered outcomes, supporting providers, training, case management, technical assistance, and problem prevention.

A toll-free number is established to receive and investigate complaints for all facilities that are licensed by, or have a contract with, Aging and Adult Services. Providers must post the toll-free number.

Adult Residential Care and Assisted Living by Contract:

The department is required to contract (not establish through rule) for assisted living, modified assisted living, and adult residential care. The requirements of the department's contractual terms and conditions are outlined for facility service standards, standards for resident living areas, training, and parameters of cost effective care based on a resident's ability to function. Residents are given choice, through waiver, to have care in a setting that does not allow them to function at his or her highest practicable level or is not the most cost effective (i.e., nursing home versus in-home care). The department is prohibited from contracting with providers who have a history of non-compliance with regulations.

Adult Family Homes:

Adult family home standards are modified to ensure that the residents are protected. However, such standards do not have to be consistent with the abilities and resources of the adult family home. Adult family homes are required to have a care plan for residents. The care plan must address the highest practicable level of physical, mental, and psychosocial functioning for each resident in the adult family home, unless they waive their rights to receive a plan of care after being fully informed of the need and potential benefit of such services. Exceptions to the requirement that an adult family home provider reside at the home are allowed only through standards (not good cause) as defined by the department.

The definition of adult family home is revised to allow residence of up to six adults who are unrelated to the caregivers. Exceptions are allowed, through standards defined in rule, to the requirement that the adult care home provider reside at the home. Providers must ensure that staff are competent and receive necessary training and that adult family residents receive the level of care that is consistent with their plan of care. Owners of adult family homes are required to own, rent, or lease the home to be licensed. Exceptions for the residence requirement are made for non-profit organizations. Only staff who have not committed certain crimes are allowed have unsupervised access to residents. Adult family home owners are required to provide activities for residents.

Adult family homes must meet single-family residence requirements for local building codes and state and local fire safety regulations. Adult family home providers are prohibited from interfering with the work of the long-term care ombudsman. Penalties are established if they are found to be interfering. The operation of an adult family home without a license is defined as contrary to the consumer protection act.

All adult family home providers are required to complete department-outlined initial, ongoing and specialized training; pass criminal history background check, and register the home with the secretary of the department. The application process is established. Adult family home owners are included under the uniform disciplinary act and are subject to the terms and conditions of the act.

In addition, the Department of Social and Health Services is:

- Prohibited from licensing adult care homes if the department has found that the provider has a history of non-compliance;
- Directed to establish by rule different levels of adult care home service and to issue the license is based on service level and rules for special care;
- Allowed to establish by rule the standards for licensing non-resident and multiple facility operation;
- Given the authority to inspect an adult family home at any time; the provider is required to apply for license renewal at least 60 days, rather than 90 days in advance and is required to make its license available to certain identified persons;
- Given expanded authority to include civil penalties and conditions on a license for cases of adult family home noncompliance; the specific actions for a stop placement order on an adult family home are outlined;
- Authorized to maintain a toll-free line for complaints about adult family homes; adult family homes are required to post the toll-free number and the adult family home is prohibited from retaliating against any person making a complaint and penalties regarding complaints are stipulated;
- Permitted to contract with adult family homes on the Indian reservation if licensed by the Indian tribe; a background check and all program eligibility requirements are required for adult family homes contracted on a reservation;
- Authorized to assess civil penalties against adult care home operating without a license.

<u>Long-Term Care Ombudsman</u>:

References as to whom the ombudsman must visit based on only older individuals and individuals over the age of 60 are removed. One full time equivalent employee is added to the long-term care ombudsman staff to address additional work created by the toll-free complaint line.

Chore Services:

The department is prohibited from providing chore services to anyone who is eligible for, and whose needs can be met by, another community service provided by the department. A monthly dollar lid for chore services must also be established for chore expenditures in each region. Priority for chore services must be given to people who were receiving chore services as of June 30, 1995; people for whom chore services are needed to return to the community from a nursing home, or are necessary to prevent a nursing home placement, or who are referred by adult protective services. All clients who receive chore services are required to participate in the cost of their care. The department is required to establish a methodology for client participation and must allow disabled persons to be employed.

Personal Responsibilities for Estate Recovery:

Civil penalties are imposed on individuals who knowingly receive assets transferred at less than fair market value for purposes of Medicaid eligibility. Individuals who receive any state funded long-term care, including chore services, are subject to estate recovery without regard to the recipient's age. The department is authorized to pay for attorneys, guardians, and other agencies necessary to protect assets of Medicaid clients and collect bad debts. Legal notices regarding a deceased person's estate must be sent to the department, and the notices must also include the decedent's Social Security number.

Any claims made by the department for the cost of long-term care services must be included in the priority list of debts that must be paid by the estate of a deceased person. The department is also included in the list of administrators who may be named for an estate if an individual dies without a will.

Prearranged funeral service contracts funded through insurance must state that any funds from the policy are not to be used for services which are subject to claim for reimbursement for long-term care services paid for by the state. The department is required to notify the trustee of any funeral prearrangement service trust, or the cemetery authority maintaining such a trust, of the claim on the estate by the department. The trustee or the cemetery authority is required to notify the department of the death of the beneficiary.

Community care settings or nursing homes must give any amounts remaining in the deceased resident's trust accounts to the department. The department is authorized to establish a release procedure for burial expenses.

Nursing Home Audits:

The nursing home fiscal audit and patient trust fund audit cycle is changed from at least once every three years to as determined necessary by the department. A 10 day period is established for the department to notify a nursing home of its intent to conduct a fiscal audit. The requirement that nursing home facilities be selected for sample audits within 120 days of submission of a correct and complete cost report is removed. The requirement that the state auditor review the department's performance in conducting nursing facility audits is modified from annually to at least every three years.

The department is granted the authority to require security at any time that an amount owed to the department by the contractor for a settlement of rate adjustment exceeds $50,000 and for each subsequent liability exceeding $25,000.

Nursing home facilities are required to provide security at the time a debt of $50,000 is owed to the department from preliminary or final settlement. Provisions of the promissory note are outlined. Additional security is required by a nursing home facility for each subsequent $25,000 increase in debts owed to the department. All or portions of a facility's current contract payments can be withheld.

Other:

The department is authorized to administratively reduce the otherwise allowable costs of nursing home providers by 1.4 percent as a result of regulatory reforms.

The secretary of the Department of Social and Health Services is required to assemble a group to develop and implement a case management program targeting hospital physical medicine and rehabilitative patients for discharge to skilled nursing facilities for continued care at a lower cost. The Medicaid budget for these services must be reduced by 25 percent this biennium.

Substitute Bill Compared to Original Bill: The targeted number of nursing home beds to be reduced by placement of residents in other less costly care options is set at 1,000.

Additional regulation of adult family homes are included that address increased training requirements for providers and additional safety standards for staff and building codes of the residence. Adult family homes owners are required to have a care plan for each adult family home resident. Exceptions for the requirement that owners must live in the home that is licensed as an adult family home are modified to also include non-profit organizations. All licensed adult family home owners are included under the Uniform Disciplinary Act and are subject to the terms and conditions of the act.

The definition of "cost effective care" is modified by allowing individuals to have a greater choice of their setting of care.

The adult family homes resident's ability to choose a different level of care once a waiver has been completed is modified by allowing more choice.

Nursing homes without citations are allowed to have inspections every 16 to 18 months.

The department is authorized to administratively reduce the otherwise allowable costs of nursing home providers by 1.4 percent to reflect lower costs due to regulation reform.

The Secretary of the Department of Social and Health Services is authorized to implement a case management program that targets hospitals, physical medicine, and rehabilitative patients for discharge to skilled nursing facilities.

Appropriation: None.

Fiscal Note: Requested on substitute bill on March 7, 1995.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 1995.

Testimony For: State programs providing services to low-income people needing long-term care are essential services that should have a high budget priority. Placement in nursing homes should occur only when other home and community-based options are not available or the person is so frail that no other choice is feasible. We must increase quality control procedures for all types of long-term care. A lot of seniors who have been or will be steered to nursing homes can be served in their homes or in less intensive settings at less cost if we don't spend all the available resources on nursing home care. Adult family home care is a type of care that keeps people in a setting that is familiar and comfortable and this bill is consistent with providers wanting to be professional and responsible.

Testimony Against: Limiting choice in long-term care options by requiring that care be provided in an environment that affords the highest practicable level of care and by requiring a resident to waive his or her rights to use a different level of care creates additional barriers in receiving care. Frail, demented, or confused people needing long-term care will be further limited by the waiver and cost-effective language definition. The needs of the developmentally disabled will not be best served by this measure.

Testified: (HB 1908) Dave Broderick, Washington State Hospital Association; Ben Lindekugel, Evergreen Hospital Medical Center (pro); Clarice McCartan, Developmental Disabilities Council (con); Nancy Meltzer, The Arc-King County (mostly con); Frank Jose, Seattle-King County Area Agency on Aging; Wes Ingrum, Sr., Washington State Residential Care Conference; Mark Weber, Sno-King Adult Family Home Association and Washington State Residential Care Conference; Charles Reed, Aging and Adult Services, Department of Social and Health Services; Evan Iverson, Senior Lobby; Frank Winslow, Alzheimer Society of Washington (pro); Jerry Reilly, Washington Health Care Association (pro); Jason Murz, Residential Care (pro); Dave Railsback, Issaquah Care Center (pro); Margaret Casey, Washington State Catholic Conference (concerns); and Dennis Mahar, Area Agency on Aging. (HB 1962, which was incorporated into HB 1908) Jerry Reilly, Washington Health Care Association (pro w/amendment); Charles Reed, Aging and Adult Services, Department of Social and Health Services; Ruby Stamper, Washington Residential Care Conference (pro); Mark Weber, Sno-King Adult Family Home Association and Washington State Residential Care Conference (pro); Wes Ingrum, Sr., Daniel L. Simnioniw and Jeff Larson, Washington State Residential Care Conference (pro); Irene Robbins and Evan Iverson, Senior Lobby (pro); Kary Hyre, Washington Long-term Care Ombudsman (pro); Nancy James and Gail McGaffick, Home Care Association of Washington (pro); and Karen Tynes, Washington Association of Homes for the Aging (pro).