

# HOUSE BILL REPORT

## HB 1850

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**As Reported By House Committee On:**  
Health Care

**Title:** An act relating to the long-term care reorganization and standards of care reform act.

**Brief Description:** Adopting the long-term care reorganization and standards of care reform act.

**Sponsors:** Representatives Dyer, Backlund, Skinner, Talcott, Schoesler, Mitchell and Cooke.

**Brief History:**

**Committee Activity:**

Health Care: 2/18/97, 3/3/97 [DPS].

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### HOUSE COMMITTEE ON HEALTH CARE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Dyer, Chairman; Backlund, Vice Chairman; Skinner, Vice Chairman; Murray; Anderson; Sherstad and Zellinsky.

**Minority Report:** Without recommendation. Signed by 4 members: Representatives Cody, Ranking Minority Member; Conway; Parlette and Wood.

**Staff:** Antonio Sanchez (786-7383).

**Background:** The Department of Social and Health Services (DSHS) is the second largest component of the state budget and will spend over \$10 billion in federal and state dollars to serve approximately a million citizens during the current 1995-97 biennium. It serves 20 percent of the state population and 30 percent of all Washington State families. The department is the sixth largest employer in the state (16,000). Seventy percent of the DSHS budget is expended for health and long-term care services for low income families, the elderly, and persons with physical, mental, and developmental disabilities.

The department is divided into seven specialized administrations: Children's Services, Juvenile Rehabilitation, Aging and Adult Services, Medical Assistance, Health and Rehabilitation (DD and Mental Health), and Economic Services and Management Services.

The administration and delivery of state funded long-term care services is conducted by three major administrative components within the Department of Social and Health services - Aging and Adult Services, Mental Health, and Developmental Disabilities. Boarding homes, a key long-term care residential program, is administered by the Department of Health.

**AGING AND ADULT SERVICES** - Aging and Adult Services is the largest of the three long-term care programs. It is mandated to develop and manage a comprehensive and coordinated service delivery system responsive to the needs of older and disabled adults. Aging and Adult Services administers the following programs:

- Residential Care, Home Care, and Nursing Home Care
- Functional assessment for disabled adults and seniors
- Financial eligibility for long-term care benefits
- Case management for the elderly in residential care settings
- Coordination with Area Agency on Aging
- Quality assurance programs for Nursing Homes, Adult Family Homes, Assisted Living, and Adult Residential Care
- Adult Protective Services
- Nursing Home Medicaid Payment Administration

These residential and community services programs provide services to approximately 38,000 individuals. Nursing home services alone make up for 14,704 of the individuals served while the remaining 22,900 persons are provided community services. The division is responsible for overseeing a total of approximately 52,600 long-term care beds in the state.

**MENTAL HEALTH** - The Mental Health Division develops, manages, supports, and evaluates an integrated comprehensive system of mental health services for mentally ill persons in Washington State. Services administered by this division include:

- Community mental health centers
- Adult residential care treatment facilities
- Involuntary investigation and treatment services
- Children's long-term residential treatment
- Combined specialized foster care and mental health treatment
- Early intervention services
- Institutional services at Eastern State Hospital and Western State Hospital

The majority of direct services are managed and provided through Regional Support Networks in local communities.

**DEVELOPMENTAL DISABILITIES** - The Division of Developmental Disabilities provides a range of services that are designed to care for, habilitate, and case manage persons with developmental disabilities . About one in every 161 persons in Washington State is severely developmentally disabled and requires some form of long-term care service. For a person to be eligible for state supported services, their developmental disability must be attributable to mental retardation, cerebral palsy, epilepsy, autism, or any condition that is closely related to mental retardation. The services provided by the division include:

- Case management
- Residential habilitation centers
- Family Support
- County Contracted Services
- Group homes
- Tenant support
- Alternative living
- Community Institutes for the Mentally Retarded (IMRs)

The total number of persons served by the department is approximately 26,000.

**CURRENT FRAGMENTATION IN SERVICE DELIVERY** - Both boarding homes and adult family homes provide services to individuals whose services are administered in different divisions. In the case of boarding homes the administration is in a different department. In any one of these facilities as many as three administrative divisions, and two departments in the case of boarding homes, could have monitoring oversight specific to the clients they administer.

There are 2,200 adult family homes who have a total of approximately 10,200 beds statewide. The range of services and the types of residents vary greatly among the adult family homes across the state. Adult family homes are licensed and monitored by the state's Department of Social and Health Services. The number of adult family homes is growing by 30-50 beds a month. In this setting, 1,423 of the homes serve one or more persons with Alzheimer's disease, 1,030 of the homes serve one or more persons with developmental disabilities, 858 homes provide residential care for one or more persons with mental illness, and 820 homes provide respite care for persons living in the community. Boarding homes have a population diversity similar to adult family homes. As of January 1, 1997, there were 408 boarding homes with a 16,441 bed capacity. The elderly population make up 63.6 percent of the residents of boarding homes while developmentally disabled persons are 8.1 percent, persons with dementia 14.6 percent, and persons with mental illness are 11.9 percent of the boarding home population. The Department of Health is responsible for licensing and monitoring boarding homes based on standards for construction, environmental safety, and resident personal health care and rights.

## **STATE LONG-TERM CARE OMBUDSMAN AND REGULATORY**

**CONCERNS** - In 1994, the Legislature passed legislation that significantly expanded the rights of residents in boarding homes and adult family homes. The legislation directed the Washington State Long-term Care Ombudsman, which is a non-governmental organization, to report on the implementation of the law. The ombudsman did a subsequent follow-up study. The latest study of boarding homes and adult family homes by the state Long-term Care Ombudsman indicated that the Department of Health has not been able to maintain the type of regulatory program for boarding homes that is needed and further recommended that the regulatory functions within the Department of Health be transferred to the Department of Social and Health Services. The Department of Health has been conducting its regulatory duties with limited staff and resources in comparison with other long-term care regulators such as those for nursing homes and adult family homes. The study also made recommendations on increasing the regulatory practices of these facilities and consumer and other protections for long-term care residents.

### **Summary of Substitute Bill:**

#### **PART I**

### **CREATING THE DIVISION OF LONG-TERM CARE SERVICES**

**CREATION OF A NEW DIVISION** - A new Division of Long-term Care Services is established within the Department of Social and Health Services effective July 1, 1997. The Division of Long-term Care Services is given the authority to provide the administrative and regulatory structure for disabled persons currently served by the Department of Social and Health Services, Division of Mental Health, Aging and Adult Services Administration, and Division of Developmental Disabilities. Boarding home and adult family home licensing functions are transferred from the Department of Health to the new division.

**REASON FOR NEW DEPARTMENT** - The intent section outlines the major concerns with the current long-term care delivery system and summarizes the mandated solutions.

- 1) Emphasis on client and family-centered service delivery.
- 2) Eliminate administrative fragmentation.
- 3) Coordinate enforcement of regulations designed to protect the elderly and disabled.
- 4) Reduce the difficulty in matching client needs and services with categorical funding.
- 5) Increase accountability through computerized client tracking data.

**DUTIES** - The Division of Long-term Care Services is directed through prescribed duties, responsibilities, and guiding principles to establish client centered, high

quality, safe, and coordinated long-term care services to functionally disabled persons of all ages.

The new Division of Long-term Care Services is mandated to coordinate client-centered long-term care services that increase safety, accountability, and quality; and reduce costs, duplication and administrative costs.

**DEPARTMENTAL COMMITTEE ON LONG-TERM CARE AND REORGANIZATION** - A reorganization and oversight committee is required to be established within the Department of Social and Health Services to ensure that all competing interests are represented in the reorganization and implementation of the division and advise in the development and enforcement of quality standards. The departmental committee is allowed to establish technical advisory committees made up of all vested interest groups. The departmental committee is required to report to the Legislature by December 1, 1997, on the following:

1. Methods of cost-efficiencies that can be used to reallocate funds to unmet needs in direct services.
2. List and identify all non-means tested state and federal funding.
3. Methods to establish a single point of entry for service eligibility and delivery.
4. An analysis of the desirability and feasibility of establishing a voucher-type long-term care program.
5. Recommendations to establish a long-term care ombudsman program that will cover all persons who are functionally disabled.
6. Necessary modifications of the case management system.
7. Necessary modifications of the management information system.
8. Identification of what federal waivers are necessary to implement the act.
9. Draft legislation necessary to implement the proposed changes.

The committee is required to report to the Legislature quarterly. The departmental committee expires on March 1, 2001.

**JOINT COMMITTEE ON LONG-TERM CARE REORGANIZATION, REFORM AND QUALITY STANDARDS** - A joint legislative committee is established effective July 1, 1997. It is required to be made up of three members of the House of Representatives and three members of the Senate. The joint committee is mandated to review all reorganization and reform activities of the new division, review the quality standards developed, initiate or review relevant studies on long-term care, and review all rules developed by the department. The committee expires on March 1, 2001.

## **PART II**

## **FUNCTIONS TRANSFERRED TO THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES AND FROM THE DEPARTMENT OF HEALTH TO THE NEW DIVISION.**

The Division of Long-term Care Services is established within the Department of Social and Health Services and the programs and services to be transferred are listed.

The powers, duties, functions, reports, documents, surveys, books, records, files, papers, or written materials that have to do with boarding homes are transferred from the Department of Health to the Department of Social and Health Services. It requires that all appropriations for boarding homes and boarding home employees of the Department of Health must also be transferred to the Department of Social and Health Services. The Office of Financial Management is authorized to certify the apportionments to the Department of Social and Health Services, the state auditor, and the state treasurer. Collective bargaining agreements are maintained.

### **PART III**

#### **QUALITY STANDARDS AND COMPLAINT ENFORCEMENT**

**WHISTLEBLOWER PROVISIONS** - Whistleblower provisions are established for persons who experience workplace reprisal or retaliatory action as a result of communication with government agencies about suspected abuse, neglect, financial exploitation, or abandonment. This is made applicable for employees in a nursing home, adult family home, state hospital, or boarding home. Measures for confidentiality are established. Employees can be terminated or suspended for other lawful purposes. However, facilities with fewer than six residents can also terminate employees if they can demonstrate to the Department of Social and Health Services that they are unable to meet payroll. The department is given rulemaking authority to implement the whistleblower complaints.

**LONG-TERM CARE OMBUDSMEN** - The Department of Social and Health Services is required to talk to residents and their representatives during inspections. All licensed facilities are required to be covered by the ombudsman enforcement remedies and the department is mandated to provide standards to providers in a form that is easy to understand. A comprehensive complaint investigation protocol is established for the Department of Social and Health Services that gives the complainants the right to be interviewed by the department's investigator and to receive a copy of the complaint report. The department is directed to use a scope and severity scale when imposing any sanctions and extends the same protections to residents of other long-term care facilities. Retaliation against residents, employees, and others for filing complaints and facility interference with the duties of the ombudsman is prohibited. Adult family homes are given the same due process protections as boarding homes.

**FACILITY STANDARDS** - Long-term care facilities are required to only admit and maintain individuals whose needs they can safely and appropriately serve to the best of their ability and within the scope of their license. Persons who are eligible for Medicaid are required to receive a comprehensive assessment consisting of their medical history, necessary and prohibited medications, diagnosis, significant known behaviors or symptoms that may cause concern, or require special care, mental illness, activities and services preferences, and level of personal care needs.

Facilities are required to clearly inform residents at least every two years about the services, items, and activities that are customarily available in the facility or arranged by the facility and the charges for those services, items and activities. Items and activities not covered by the facility's per diem rate must also be reported every two years. Residents must be informed 30 days in advance in writing before any changes in the availability or charges of services, items, or activities or changes in the facility's rules. Exceptions can be made for unusual circumstances and for facilities that have six or fewer residents.

**DISCLOSURE** - Long-term care facilities are required to fully disclose to potential residents who are Medicaid eligible, the service capabilities of the facility prior to the admission to the facility.

**CONSUMER PROTECTION** - The Department of Social and Health Services is required to identify other care options for Medicaid residents with care needs higher than the licensed capabilities of the facility. Facilities must first try to reasonably accommodate the care needs of individuals before they are transferred or discharged.

Facilities that require an advance notice before a resident is transferred from the facility, or require a minimum stay fee are required to disclose in writing, and clear language the resident can understand, a statement of prepaid charges. In addition, facilities are required to disclose in writing prepaid charges that will be refunded to the resident if the resident leaves. If the facility does not comply with the required notice, the deposits, admissions fees, prepaid charges, or minimum stay fees cannot be kept by the facility. Facilities are allowed to retain an additional amount of a deposit to cover reasonable and actual expenses resulting from a resident's move. However, these charges are not to exceed five days' per diem charges.

**PROHIBITION AGAINST SIGNING A WAIVER OF RIGHTS** - All long-term care facilities are prohibited from requiring or requesting that residents sign a waiver of potential liability for losses of personal property or injury.

**ENHANCED RESIDENTIAL CARE** - Facilities that choose to provide enhanced residential care are required by the Department of Social and Health Services to make structural modifications to existing building construction.

**HOSPITAL DISCHARGE LONG-TERM CARE SCREENING** - Hospitals are given the opportunity to voluntarily choose to work together with the Department of Social and Health Services in assisting patients to find long-term care services.

**QUALITY IMPROVEMENT INSPECTIONS** - The Department of Social and Health Services is required to interview an appropriate percentage of residents, family members, residents managers, and advocates, in addition to providers and staff, when conducting licensing inspections. Providers must receive a clear set of health, quality of care, and safety standards from the department.

**ENFORCEMENT STANDARDS** - Facilities found to have delivered care that seriously endangered the safety, health, or well-being of residents, or if a facility's failure to deliver care resulted in the endangerment of the resident's safety, health, or well-being, must have prompt and specific remedies enforced including reasonable conditions on their license or contract.

**BACKGROUND SCREENING** - The Department of Social and Health Services is encouraged to provide timely screening of employees for criminal histories, skills, level of training, and education. Employees may be hired provisionally pending the results of their background checks if they provide three positive references.

Staff or providers of long-term care who have unsupervised access to vulnerable persons and who have a final order or finding of fact issued by a court of law or a disciplining authority for abuse, neglect, exploitation, or abandonments of a minor or vulnerable adult are prohibited from working with vulnerable adults.

**OMBUDSMAN TOLL FREE NUMBER PROGRAM** - The long-term care ombudsman toll free number program is expanded to include the posting of the department's toll free number at all facilities that provide services by license or contract to the Department of Social and Health Services. This includes group homes, boarding homes, and other facilities not currently required to post the ombudsman toll free number.

**LONG-TERM CARE TRAINING** - The department is required to promote the development of a training system for long-term care that is relevant to the needs of residents, providers, and staff and to improve access to training by the use of satellite technology coordinated through the community colleges.

**COMPLAINT INVESTIGATION PROTOCOLS** - The Department of Social and Health Services is mandated to enhance its complaint investigation protocols by requiring the following:

- That the department conduct a preliminary review of the complaint;
- That the department assess the severity and assign an appropriate response time;



- That complaints involving imminent danger to the health and safety of a resident must be investigated on-site and within two days;
- That the complainant is promptly contacted by the department and informed of the right to meet the inspectors at the site of the alleged violations, the proposed course of action, and a written report;
- That the department interview the complainant, unless anonymous, the resident, when possible, in addition to the facility staff, and family members;
- That technical assistance be provided by the department when appropriate;
- That sanctions be delivered against facilities and individuals for complaints involving harm to a resident; and
- That facilities report substantiated complaints of neglect, abuse, exploitation, or abandonment of residents to the appropriate law enforcement agencies, the attorney general, and appropriate disciplinary boards.

Measures are outlined to protect confidentiality of the witness, resident, provider, officer, agent of the department, and employee involved in the allegations. Protections are established for the ombudsman and the resident involved in the complaint.

**QUALITY STANDARDS COMMITTEE** - The Department of Social and Health Services is also directed to establish a quality improvement standards committee under existing funds.

## **PART IV**

### **ESTATE RECOVERY CONSUMER PROTECTION DISCLOSURE**

**ESTATE RECOVERY** - The Department of Social and Health Services is mandated to seek reimbursement for nursing home care or at-home services provided prior to October 1, 1993, from the estate of a deceased recipient and the department is given the authority to file liens to secure the state's interest in real property. The use of community property agreements as a way to avoid debt owed the state for long-term care costs is eliminated. Adult Protective Services costs are exempted from recovery.

**CONSUMER PROTECTION/DISCLOSURE** - The department is given the responsibility to fully disclose the terms and conditions of estate recovery and provide consumers with quarterly notices of services used and the amount being charged against the estate and provide a written service plan to the facility that outlines the client's level of need and appropriate medical and care information. Long-term care facilities are required to only admit individuals whose needs they can safely and appropriately serve in the facility with current staff and accommodations. All long-term care facilities are required to fully disclose the service capabilities of the facility.

## **PART V**

### **BOARDING HOME DISCIPLINARY ACT**

**UNIFORM DISCIPLINARY ACT** - Boarding home operators and providers are included under the uniform disciplinary act. The uniform disciplinary act governs the procedures and sanctions for unprofessional conduct of health professionals. Boarding home operators and providers will be covered under the act.

**PILOT PLAN FOR IMPLEMENTING ACCREDITATION PROGRAM** - The Department of Social and Health Services and the Department of Health are required to develop a plan for implementing a pilot program for accrediting boarding homes with a recognized non-governmental accreditation organization. The pilot plan must be presented to the Legislature by January 5, 1998, for consideration and funding.

## **PART VI**

### **ADULT FAMILY HOMES**

**ADULT FAMILY HOME LIMITED MORATORIUM** - A limited moratorium on the authorization of adult family home licenses is established. The advisory committee within the department is authorized to determine when it is safe to remove the moratorium. The determination can occur if all quality standards have been reviewed by the secretary and deemed sufficient to protect the safety and health of residents and the adult family home owners and operators have been notified of the standards. The moratorium is lifted in December 1997, or at a date determined by the secretary.

## **PART VII**

### **MISCELLANEOUS PROVISIONS**

**OMBUDSMAN STUDY** - The Department of Community, Trade and Economic Development is mandated to conduct a study, and make recommendations to implement a single umbrella ombudsman organization to assist persons with developmental disabilities, older Americans, and mentally ill persons. The department is required to report to the appropriate committees of the House of Representatives and the Senate by January 10, 1998.

**CERTIFICATION STANDARDS FOR COMMUNITY RESIDENTIAL ALTERNATIVES** - The Department of Social and Health Services is required to review the cost and feasibility of implementing developmental disabilities certification standards for community residential alternatives such as group homes, alternative living, intensive and other tenant support services, adult family homes, or boarding

homes. The areas to be reviewed for certification standards are outlined. The department is required to report to appropriate committees of the House of Representatives and the Senate by January 30, 1998.

**ADULT FAMILY HOME ADVISORY COMMITTEE FEASIBILITY STUDY** - The Department of Social and Health Services is required to conduct a review of the cost and feasibility of creating an Adult Family Home Advisory Committee.

**Substitute Bill Compared to Original Bill:**

**REMOVED FROM THE BILL:**

**DEPARTMENT OF LONG-TERM CARE SERVICES** - All references to the Department of Long-term Care Services are eliminated and replaced with the Division of Long-term Care Services.

**PROTECTIONS FOR VULNERABLE ADULTS** - All language that established a new crime and related penalties for a new crime of criminal mistreatment in the third degree for a person who, while caring for a frail elderly person or vulnerable adult, negligently creates a risk of bodily injury by withholding the basic necessities of life, or negligently causes bodily injury by withholding the basic necessities of life is removed.

Also eliminated are the new grounds that were created for committing rape in the second degree and indecent liberties for a person who engages in sexual intercourse with a frail elderly or vulnerable adult. The mandatory disclosure of criminal history requirements for individuals who are employed by licensed facilities or who apply for employment with licensed facilities are removed as is the requirement that all adult family homes report suspected abuse and neglect to law enforcement when the injury makes such a report appropriate.

**LONG-TERM CARE OMBUDSMAN/COMPLAINT INVESTIGATION** - The Department of Community, Trade and Economic Development's authorization to promulgate needed rules for the Long-term Care Ombudsman Program is eliminated.

**DEVELOPMENTAL DISABILITIES EXEMPTION** - The exemption from estate recovery provisions for people with developmental disabilities is removed.

**RESIDENTS WITH BEHAVIORAL PROBLEMS** - Language that specifies that residents with behavioral problems can be discharged based on an outlined process is removed.

**ADDED TO THE BILL:**

**DIVISION OF LONG-TERM CARE** - A new Division of Long-term Care is established.

**STAFF AND FUNDING REQUIREMENTS** - Requirements are added that state that no additional state employees can be hired as a result of establishing the division unless they are for quality assurance and that any funds saved from the elimination of management level positions must be used for direct services and enhanced quality assurance and complaint investigation.

**PROGRAMS FOR CRIMINALLY INSANE** - Programs for the criminally insane under chapter 10.77 RCW are added to the new division.

**WHISTLEBLOWER** - Language is added that allows a resident who is involved in a whistleblower incident at the facility to be discharged if his/her care needs cannot be met by the facility. Employee whistleblowers may be terminated for other lawful reasons. Boarding homes are also included under the whistleblower provisions. Facilities with fewer than six residents are allowed to discharge all employees, including employee whistleblowers, if the facility is unable to meet payroll.

**FACILITY STANDARDS** - Long-term care facilities are required to only admit and maintain individuals whose needs they can safely and appropriately serve to the best of their ability and within the scope of their license. Persons who are eligible for Medicaid are required to receive a comprehensive assessment consisting of their medical history, necessary and prohibited medications, diagnosis, significant known behaviors or symptoms that may cause concern or require special care, mental illness, activities and services preferences, and level of personal care needs.

Residents must be informed thirty days in advance in writing before any changes in the availability or charges of services, items, or activities or changes in the facility's rules. Exceptions are added for unusual circumstances and for facilities that have six or fewer residents.

**DISCLOSURE** - Long-term care facilities are required to fully disclose to potential residents who are Medicaid eligible the service capabilities of the facility prior to the admission to the facility.

**BACKGROUND SCREENING** - Employees may be hired provisionally pending the results of their background checks if they provide three positive references. Staff or providers of long-term care who have unsupervised access to vulnerable persons and who have a final order or finding of fact issued by a court of law or a disciplining authority for abuse, neglect, exploitation, or abandonment of a minor or vulnerable adult are prohibited from working with vulnerable adults.

**LONG-TERM CARE TRAINING** - Language is added that requires the Department of Social and Health Services to promote the development of a training system for long-term care that is relevant to the needs of residents, providers, and staff and to improve access to training by the use of satellite technology coordinated through the community colleges.

**PROHIBITION AGAINST SIGNING A WAIVER OF RIGHTS** - All long-term care facilities are prohibited from requiring or requesting that residents sign a waiver of potential liability for losses of personal property or injury.

**CERTIFICATION STANDARDS FOR COMMUNITY RESIDENTIAL**

**ALTERNATIVES** - The requirement that the Department of Social and Health Services review the cost and feasibility of implementing developmental disabilities certification standards for community residential alternatives such as group homes, alternative living, intensive and other tenant support services, adult family homes, or boarding homes is added. The areas to be reviewed for certification standards are outlined. The department is required to report to appropriate committees of the House of Representatives and the Senate by January 30, 1998.

**ADULT FAMILY HOME ADVISORY COMMITTEE FEASIBILITY STUDY** -

The Department of Social and Health Services is required to conduct a review of the cost and feasibility of creating an Adult Family Home Advisory Committee.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 6, 1997..

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** The administration of long-term care services in a new department would facilitate greater coordination of services and quality standards.

**Testimony Against:** A new department would be costly without directing funds for needed services. The quality enforcement components should remain as is.

**Testified:** Evan Iverson and Bruce Reeves, Senior Citizens Lobby (con); Frank Winslow, Alzheimer Society of Washington (pro); Irene Robbins, Alzheimer Society of Western & Central Washington (con); Duwane Huffaker and Carol Dotlich, Washington Federation of State Employees; Karen Tynes, Washington Association of Homes for the Aging; Jerry Reilly, Washington Health Care Association (pro); Joey Hood, Home Care Association of Washington (pro); Ed Hidano, Carole Washburn, and Ralph Smith, Department of Social & Health Services (con); and Sherman Cox, Department of Health.