

HOUSE BILL REPORT

SHB 2041

As Passed House:

March 9, 2001

Title: An act relating to resident protection standards in boarding homes and adult family homes.

Brief Description: Providing for resident protection standards in boarding homes and adult family homes.

Sponsors: By House Committee on Health Care (originally sponsored by Representatives Edmonds, Skinner, Ogden and Kenney).

Brief History:

Committee Activity:

Health Care: 2/22/01, 2/27/01 [DPS].

Floor Activity:

Passed House: 3/9/01, 93-0.

Brief Summary of Substitute Bill

- For violations resulting in a stop placement the Department of Social and Health Services (DSHS) must make an on-site visit to the facility within 15 working days. On-site visits are to be made as soon as appropriate for serious recurring or uncorrected violations. To verify if a facility has corrected all other violations, the department can choose either an on-site visit or request credible documentation be submitted, showing compliance.
- When the department has placed a stop placement on a facility it can be removed when it is shown that the facility has corrected the violation for which the original stop placement has been ordered.
- The DSHS is directed to establish a voluntary temporary management program for adult family homes. Providers who have had their license suspended and without temporary management would have to move their residents.
- Adult family homes and boarding homes are allowed to participate in a DSHS authorized informal dispute resolution process to try to resolve violations.
- Any adult family home or boarding home provider who receives a denial, suspension, non-renewal, or revocation of their license is allowed to voluntarily relinquish their license for a period of 20 years.
- A Joint House of Representatives and Senate Task Force on Resident Protection Standards is created to examine the current enforcement and resident protection standards, due process, other relevant operations, and complaint investigation processes that apply to the adult family home and boarding home licensing and quality assurance programs. A report is due by December 12, 2001.

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Campbell, Republican Co-Chair; Cody, Democratic Co-Chair; Schual-Berke, Democratic Vice Chair; Skinner, Republican Vice Chair; Alexander, Ballasiotes, Conway, Darneille, Edmonds, Edwards, Marine, McMorris, Pennington and Ruderman.

Staff: Antonio Sanchez (786-7383).

Background:

Adult Family Homes are residential homes licensed to care for up to six residents. They provide room, board, laundry, necessary supervision, assistance with activities of daily living, and personal care. There are 2,077 adult family homes who have a total of approximately 10,797 beds statewide. Approximately 3,158 residents are government funded.

Boarding homes offer assisted living facilities, enhanced adult residential care facilities, adult residential care facilities, private pay board and care and assisted living services and a mixture thereof. The majority of boarding home residents are private pay and these facilities have residents with similar care needs as those served in Adult Family Homes. As of January 1, 2001, there were 507 licensed boarding homes with a 21,884 bed capacity. There are 4,725 government funded residents in boarding homes.

The Department of Social and Health Services (DSHS) is responsible for licensing and monitoring both boarding homes and adult family homes and has the authority to apply specific enforcement actions resulting from violations found during a complaint investigation or annual licensing inspection.

Current Due Process Procedures for Boarding Homes and Adult Family Homes:

When an adult family home or a boarding home is found to be out of compliance with standards for the protection of their residents during an inspection or a complaint investigation, the DSHS holds a meeting (exit conference) with the provider to provide comments found during the inspection. If there is a violation found in the facility, the conference will also give the provider an opportunity to show evidence that they were in compliance and that the violation should therefore be deleted. The meeting will also serve to inform the provider what is expected and whether an enforcement action will be recommended and, if so, what type of action may be taken. The department will also indicate how they will monitor compliance.

After the provider receives the formal written Statement of Deficiencies (SOD), the provider also has the opportunity to have an Informal Dispute Resolution (IDR) meeting if requested by the provider within 10 days after receiving the SOD. This IDR conference is held with the field manager. During the IDR meeting the provider can dispute the enforcement citation by presenting evidence to show that they were in compliance. If successful, the violation and any related enforcement remedies are removed or withheld. To decide whether enforcement action should be taken, the DSHS undergoes an internal agency review with staff, the field manager, enforcement officer, and assistant director to review and approve the enforcement actions.

The provider also has the ability to formally appeal to the Office of Administrative Appeals within 28 days of receiving the written SOD and notice of enforcement action. The right to an administrative hearing is before a non-DSHS Administrative Law Judge where they are allowed to submit evidence and call witnesses on their own behalf. If the

provider is still not satisfied with the outcome, they can ask for another reconsideration by appealing to the Superior Court.

The department has no specified time frame in which it has to make an on-site visit to monitor compliance following a violation. It also does not currently have the authority to monitor compliance by choosing between either an on-site visit or verification by credible documentation.

The department is currently offering informal dispute resolution to all providers as part of their departmental rules.

Currently, the department has authority to select any one of the following enforcement actions (penalties) to sanction boarding homes and adult family homes.

1. Denial of License
2. Civil Fines
3. Stop Placement
4. Conditions on a License (may include DSHS authorized temporary management only for boarding homes)
5. License Revocation
6. Summary Suspension
7. Refusal to Renew License

There is currently no legislative authorization allowing for a temporary manager to be placed in the boarding home or adult family home facilities that would otherwise be closed because of a serious infraction.

When the 1998 Legislature transferred responsibility for licensing boarding homes from the Department of Health to the DSHS, the boarding home industry expressed concern that the DSHS would be too heavy handed in its approach. Since the transfer, the DSHS developed an ongoing survey of boarding homes inspections and the inspection process in adult family homes. Results from the surveys indicate that boarding homes are responding favorably to the transfer, with many providers, according to a recent report, "complimenting the department staff for implementing a fair and appropriate process." Adult family homes also reported that the majority of providers are positive towards the department's program for administering licensing of adult family homes.

The department's new licensing system is also proving to be efficient according to the same report. At the time of the transfer, the DSHS received a large backlog of licensing inspections and complaints to be investigated by October, 1999. The department had completed all 250 overdue inspections (55 percent of all boarding homes) and had investigated 190 complaints that had been filed before the transfer.

The department has also implemented the Boarding Home Advisory Committee,

established by the Legislature in 2000. It is intended to assist the department in continuing to improve services to residents and providers.

Summary of Bill:

For any violations resulting in a stop placement in a boarding home or adult family home, the DSHS is required to make an on-site visit to the facility within 15 working days. On-site visits are to be made as soon as appropriate for serious recurring or uncorrected violations that could, or have, caused harm to a resident following a previous citation. To verify if a facility has corrected all other violations, the department can choose either an on-site visit or request credible documentation be submitted by the provider that shows that they are in compliance.

When the department has placed a stop placement on a facility it can be removed when it is shown that the facility has corrected the violation for which the original stop placement has been ordered. However, if the department finds a new violation during the review for compliance of the original stop placement that is serious enough to warrant another stop placement, the original stop placement will remain in effect until the new stop placement is imposed.

The DSHS is directed to establish a voluntary temporary management program for adult family homes similar to what is already standard practice for contracted boarding homes. This program will be for adult family home providers who have had their license suspended and without temporary management would have to move their residents. The terms and conditions of the temporary managers duties are outlined. The DSHS and licensee are required to provide written notification to all residents of the temporary management. Residents affected by temporary management have the opportunity to move out of the facility without advance notice and without incurring charges. The temporary management is valid for 28 days after the issuance of the notification of the enforcement action or until the issue has been resolved. The department is authorized to adopt appropriate rules to implement the temporary management program and to recruit and approve temporary managers.

Adult family homes and boarding homes are allowed to participate in a DSHS authorized informal dispute resolution process to try to resolve violations found during an inspection or complaint investigation. The facility must request the informal dispute resolution within 10 working days from the receipt of the department's findings and the department, in turn, can convene a meeting within 10 working days, or later if agreed upon, after the request. The informal dispute resolution process must include a DSHS employee who did not participate in, or oversee, the determination of the violation. If the department finds through the informal dispute that the violation or enforcement should not be given to the facility, the DSHS will delete the violation or rescind the enforcement remedy and issue an updated report.

Any adult family home or boarding home provider who receives a denial, suspension, non-renewal, or revocation of their license is allowed to voluntarily relinquish their license for a period of 20 years. The license record will indicate that the provider relinquished their licence without admitting the violations.

A Joint House of Representatives and Senate Task Force on Resident Protection Standards is created to examine the current enforcement and resident protection standards, due process, other relevant operations, and complaint investigation processes that apply to the adult family home and boarding home licensing and quality assurance programs. A report is due to the chairs of the appropriate committees of the House of Representatives and Senate by December 12, 2001.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The modifications of the due process standards for boarding homes and adult family homes providers will make the entire licensing process more effective and efficient for residents, providers, and the department. These changes are the result of all parties coming together and wanting to make the system work better. The study will pickup the issues that we could not agree upon and we will work together to identify major issues of due process and resident protection that need to be addressed and possibly changed.

Testimony Against: None.

Testified: (In support) Representative Skinner, co-prime sponsor; Representative Edmonds, co-prime sponsor; Jerry Reilly, Washington Health Care Association; Deb Murphy and Lauri St. Ours, Nor ALFA; Bill Day; and Jeff Larsen.

(In support of Substitute) Kary Hyre, Long-term Care Ombudsman; and Pat Lashway, Department of Social and Health Services.

(Neutral) Art Wang, Office of Administrative Hearings.