

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 6807

Chapter 251, Laws of 2008

(partial veto)

60th Legislature
2008 Regular Session

LONG-TERM CARE--MEDICAID RESIDENTS--DISCHARGE

EFFECTIVE DATE: 03/28/08

Passed by the Senate March 10, 2008
YEAS 46 NAYS 2

BRAD OWEN

President of the Senate

Passed by the House March 5, 2008
YEAS 96 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6807** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

Approved March 28, 2008, 11:30 a.m.,
with the exception of section 2 which
is vetoed.

FILED

March 28, 2008

CHRISTINE GREGOIRE

Governor of the State of Washington

Secretary of State
State of Washington

SUBSTITUTE SENATE BILL 6807

AS AMENDED BY THE HOUSE

Passed Legislature - 2008 Regular Session

State of Washington

60th Legislature

2008 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senators Kastama, Keiser, Fairley, and Kohl-Welles)

READ FIRST TIME 02/12/08.

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

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

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

7 (1) If a boarding home voluntarily withdraws from participation in
8 a state medicaid program for residential care and services under
9 chapter 74.39A RCW, but continues to provide services of the type
10 provided by boarding homes, the facility's voluntary withdrawal from
11 participation is not an acceptable basis for the transfer or discharge
12 of residents of the facility (a) who were receiving medicaid on the day
13 before the effective date of the withdrawal; or (b) who have been
14 paying the facility privately for at least two years and who become
15 eligible for medicaid within one hundred eighty days of the date of
16 withdrawal.

17 (2) A boarding home that has withdrawn from the state medicaid
18 program for residential care and services under chapter 74.39A RCW must
19 provide the following oral and written notices to prospective

1 residents. The written notice must be prominent and must be written on
2 a page that is separate from the other admission documents. The notice
3 shall provide that:

4 (a) The facility will not participate in the medicaid program with
5 respect to that resident; and

6 (b) The facility may transfer or discharge the resident from the
7 facility for nonpayment, even if the resident becomes eligible for
8 medicaid.

9 (3) Notwithstanding any other provision of this section, the
10 medicaid contract under chapter 74.39A RCW that exists on the day the
11 facility withdraws from medicaid participation is deemed to continue in
12 effect as to the persons described in subsection (1) of this section
13 for the purposes of:

14 (a) Department payments for the residential care and services
15 provided to such persons;

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

18 (c) Ongoing inspection, contracting, and enforcement authority
19 under the medicaid contract, regulations, and law.

20 (4) Except as provided in subsection (1) of this section, this
21 section shall not apply to a person who begins residence in a facility
22 on or after the effective date of the facility's withdrawal from
23 participation in the medicaid program for residential care and
24 services.

25 (5) A boarding home that is providing residential care and services
26 under chapter 74.39A RCW shall give the department and its residents
27 sixty days' advance notice of the facility's intent to withdraw from
28 participation in the medicaid program.

29 (6) Prior to admission to the facility, a boarding home
30 participating in the state medicaid program for residential care and
31 services under chapter 74.39A RCW must provide the following oral and
32 written notices to prospective residents. The written notice must be
33 prominent and must be written on a page that is separate from the other
34 admission documents, and must provide that:

35 (a) In the future, the facility may choose to withdraw from
36 participating in the medicaid program;

37 (b) If the facility withdraws from the medicaid program, it will
38 continue to provide services to residents (i) who were receiving

1 medicaid on the day before the effective date of the withdrawal; or
2 (ii) who have been paying the facility privately for at least two years
3 and who will become eligible for medicaid within one hundred eighty
4 days of the date of withdrawal;

5 (c) After a facility withdraws from the medicaid program, it may
6 transfer or discharge residents who do not meet the criteria described
7 in this section for nonpayment, even if the resident becomes eligible
8 for medicaid.

9 *Sec. 2. RCW 70.129.110 and 1997 c 392 s 205 are each amended to
10 read as follows:

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

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

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

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

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

21 (e) *The facility ceases to operate.*

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

28 (3) All long-term care facilities shall fully disclose in writing
29 to residents and potential residents, or their legal representative,
30 the facility policy on accepting medicaid as a payment source. The
31 policy shall clearly and plainly state the circumstances under which
32 the facility will care for persons who are eligible for medicaid upon
33 admission or who may later become eligible for medicaid. Disclosure
34 must be provided prior to admission, and the facility must retain a
35 copy of the disclosure signed by the resident or their legal
36 representative. The facility policy on medicaid as a payment source as

1 of the date of the resident's admission to the facility shall be
2 considered a legally binding contract between the resident and the
3 facility.

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

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

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

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

13 (d) Include in the notice the items described in subsection ((5))

14 (6) of this section.

15 (((4))) (5)(a) Except when specified in this subsection, the notice
16 of transfer or discharge required under subsection ((3)) (4) of this
17 section must be made by the facility at least thirty days before the
18 resident is transferred or discharged.

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

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

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

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

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

26 (((5))) (6) The written notice specified in subsection ((3)) (4)
27 of this section must include the following:

28 (a) The reason for transfer or discharge;

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

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

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

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

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

5 (((6))) (7) A facility must provide sufficient preparation and
6 orientation to residents to ensure safe and orderly transfer or
7 discharge from the facility.

8 (((7))) (8) A resident discharged in violation of this section has
9 the right to be readmitted immediately upon the first availability of
10 a gender-appropriate bed in the facility.

*Sec. 2 was vetoed. See message at end of chapter.

11 NEW SECTION. Sec. 3. This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 immediately, except for section 2 of this act which applies
15 retroactively to September 1, 2007.

Passed by the Senate March 10, 2008.

Passed by the House March 5, 2008.

Approved by the Governor March 28, 2008, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 28, 2008.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 2, Substitute
Senate Bill 6807 entitled:

"AN ACT Relating to discharge of long-term care residents."

Substitute Senate Bill 6807 prohibits a boarding home from
transferring or discharging a current resident on the basis that it
is voluntarily withdrawing from the Medicaid program.

Section 2 requires all long-term care facilities to disclose in
writing to any potential resident prior to admission the facility
policy on accepting Medicaid as a payment source. Upon admission,
the disclosure will be considered a legally binding contract between
the resident and the facility.

I am concerned that this section is impossible to implement
retroactively, and there is no recourse for those who would be in
violation of this bill the moment it becomes effective. In addition,
Washington's administrative code already requires the disclosure
contemplated in Section 2.

For these reasons, I have vetoed Section 2 of Substitute Senate Bill
6807.

With the exception of Section 2, Substitute Senate Bill 6807 is
approved."