

SENATE BILL REPORT

SB 5622

As Reported By Senate Committee On:
Health & Long-Term Care, March 6, 1995
Ways & Means, March 23, 1995

Title: An act relating to long-term care.

Brief Description: Modifying provision of long-term care services.

Sponsors: Senators Rinehart, Wojahn, Fairley, Fraser and Kohl; by request of Department of Social and Health Services.

Brief History:

Committee Activity: Health & Long-Term Care: 3/6/95 [w/oRec-WM].
Ways & Means: 3/16/95, 3/23/95 [DP2S].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5622 be substituted therefor, and be referred to Committee on Ways & Means without recommendation.

Signed by Senators Quigley, Chair; C. Anderson, Deccio, Fairley, Franklin and Wood.

Staff: Rhoda Jones (786-7198)

Background: The Department of Social and Health Services Aging and Adult Administration (AASA) is responsible for providing publicly funded long-term care services for eligible consumers in Washington State. Currently, AASA contracts for long-term care services for approximately 17,000 clients in nursing homes, approximately 3,800 residents of licensed community care facilities such as adult family homes and congregate care facilities, and over 18,000 residents in their own homes. These services include Medicaid Personal Care, Community Options Program Entry System (COPES) and state-funded Chore services.

In 1993, the Legislature instructed AASA to reduce the number of nursing home beds in the state by 750 over the biennium. (Nursing homes represent 70 percent of the administration's budget.) This was driven by a reduced demand for nursing home beds, and the belief that many individuals in nursing homes could be served in the community at less expense to the state. At the same time, the Legislature appropriated \$21 million to enhance in-home and other community-based services. This accelerated the last decade's shift in the long-term care service system from its historical emphasis on nursing homes toward less costly community alternatives.

In 1994, the Legislature directed DSHS to develop a plan for reducing AASA's expenditures to comply with the 10.3 percent growth rate permitted under Initiative 601. Under current law, the long-term care budget is projected to grow by 29 percent, almost three times the rate allowed under 601. Long-term care costs are growing rapidly for three reasons: the

number of people needing long-term care is growing; more people are turning to the state for care who formerly were cared for by family; and the per-person costs of nursing home and in-home care have substantially exceeded the rate of inflation.

If they were to grow no faster than the I-601 spending limit, state long-term care costs should grow by \$65 million in 1995-97, rather than by the \$170 million general fund-state projected under current law.

Summary of Substitute Bill: The legislation intends to expand and promote home and community long-term care services as less costly and preferred alternatives to institutional care. It is also intended that individuals become responsible for the cost of their long-term care to the extent possible under federal law.

Expanding Community Long-term Care Services. The department is allowed to expand the federal waiver for the Community Options Program Entry System (COPEs). The department is prohibited from providing (state-funded) Chore services to anyone who is eligible for another service provided by the department, and clients are required to participate in the cost of Chore services.

The department is directed to establish flexible payment rates for home and community services, and supplemental assisted living rates for nursing homes in the process of permanently converting beds to assisted living. AASA is authorized to set up a quality control system across community services that includes case management, problem prevention, training and qualification standards for all providers and staff, and a consumer complaint mechanism. The department may set new contract standards for licensed community care facilities, and is given new authority to monitor facilities and issue interim sanctions to licensees who do not comply with department rules.

The department may contract with Area Agencies on Aging to provide case management and reassess and reauthorize clients who receive Chore, COPEs and Title XIX Personal Care Services.

Nurse Delegation. A bipartisan committee is created to study the safety and cost-effectiveness of nurse delegation. The committee includes four members of the House Health Care Committee and four members of the Senate Health & Long-Term Care Committee, with staff support from OPR and SCS and technical support from DSHS, DOH and HCQAC.

Changes in Institution-based Long-term Care. The department must work with hospital discharge planners to inform patients of home and community options for long-term care. The department must assess and inform individuals who are Medicaid clients or applicants, or eligible for both Medicare and Medicaid and are likely to apply for admission to a nursing facility. Other potential Medicaid recipients may also be assessed. The department must not delay hospital discharges.

Nursing facilities are prohibited from admitting Medicaid-eligible patients who are not assessed by the department.

A moratorium is imposed on new Medicaid nursing facility contracts until December 31, 1998 or such time as the department implements selective contracting, whichever is earlier. The department is required to submit a waiver request to the federal government by December 1, 1997 for selective contracting or managed care, if it is deemed appropriate.

Nursing home payment rates are "rebased" according to actual spending every four years, rather than every two years. In the years in which they are not rebased, payment rates are increased by a national index of nursing home inflation.

DSHS must audit nursing homes periodically, rather than at least once every three years. Both DSHS and nursing homes must pay all settlement amounts due within 60 days, regardless of whether there are appeals pending.

Estate Recovery. The department's ability to recover the cost of Medicaid services is expanded to also include personal care services, chore costs and other state-funded programs. The department is given new authority to penalize individuals who abuse fiduciary power, and authorizes the state to obtain legal assistance in probate cases. The amount of assets that can be protected in an irrevocable burial trust may be limited by rule.

Substitute Bill Compared to Original Bill: The original bill permitted registered nurses to delegate specific nursing tasks in community long-term care settings. Nurse delegation was permitted on "stable and predictable" patients and their consent was required. The Nursing Care Quality Assurance Commission was directed to establish protocols for nurse delegation.

The substitute bill eliminates all references to nurse delegation and replaces them with a bipartisan committee to study the issue.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect July 1, 1995.

Testimony For: None.

Testimony Against: None.

Testified: No one.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5622 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Bauer, Drew, Fraser, Gaspard, Hargrove, Moyer, Pelz, Sheldon, Snyder, Spanel, Sutherland, Winsley and Wojahn.

Staff: Tim Yowell (786-7715)

Second Substitute Bill Compared to Substitute Bill: Nurses may delegate certain specified tasks to registered nursing assistants to perform on behalf of particular residents of developmental disabilities residential programs, adult family homes, and assisted living facilities whose conditions are stable and predictable. The delegation must occur according to protocols to be developed by the Nursing Care Quality Assurance Commission. The registered nursing assistant must complete a core training curriculum to be developed by the Department of Social and Health Services in consultation with other groups. A joint task force of the House and Senate is established to monitor implementation of the nurse delegation provisions.

DSHS is instructed to implement the nursing home regulatory reforms recommended by the February 1995 Legislative Budget Committee report.

The fine for knowingly accepting assets which have been illegally transferred in order to qualify for state-funded long-term care is increased to 150 percent of the cost of the care provided, plus legal costs.

Testimony For: If the state paid more competitive rates for adult family homes and assisted living, many people could move out of nursing homes. The bill gives people more choices. This is a consumer-driven response to the challenges of long-term care. It fills many important holes in the current long-term care system, most critically by providing for in-service training for community caregivers. Community-based care allows people the dignity of maintaining their community networks and contacts.

The most desirable option is for people to remain at home. The next step shouldn't have to be a nursing home -- there should be many steps in between, and this bill provides for them. Home care is the wave of the future because it is what people want.

Nursing home rates would still grow substantially under this bill, and substantially more than rates for other social service providers will.

Adult family homes already handle difficult cases, particularly people with dementia who can't be cared for in group settings. The developmental disabilities community strongly supports higher standards and improved monitoring of adult family homes.

The nurse delegation provisions of the original bill would improve the quality of care and make clients safer because they would assure more nurse oversight and involvement than often occurs now. The proposed nurse delegation amendment would leave the decision-making responsibility about whether to delegate and to whom totally up to the nurse. It is inefficient for the state to pay for an LPN to provide medication and take glucose levels when the foster family could do so, just as they did before the person turned 21.

(w/concerns): State employees object to having Area Agencies on Aging reauthorize services because it's duplicative and confusing to clients.

More funds are desperately needed for increased compensation for home-care workers. Funds should be specifically earmarked for this purpose.

The current quality assurance system which is in place for home care agencies should be used rather than spending money creating a new one.

Giving Area Agencies on Aging the authority to provide case management gives them an unfair competitive advantage relative to home care agencies because of their tax exempt status.

Testimony Against: The quality of nursing home care will decrease if the state doesn't re-base rates to reflect actual spending. Nursing homes have increased wages with the expectation the increased costs would be recognized in July '95 rate setting. Not re-basing will result in higher turnover and lower quality of care for people in nursing homes.

Federal and state mandates are driving nursing home costs, and those mandates aren't going to go away just because the state changes the reimbursement system.

It is costly and unsafe to expect elderly patients to move from nursing homes, because their conditions are unstable and unpredictable. Nursing homes are required to help people reach their highest practicable level of functioning while community care programs are not. There is no evidence that a 12.5 percent reduction in the nursing home population is safe or appropriate. If facilities lose that amount of population, the quality of care for the remaining residents will suffer. Nursing homes are essential for people who can't be cared for at home, particularly for those with Alzheimer's disease. Nursing homes already send everyone who can be cared for at a lesser level of care facility to one.

Proposed changes to the Nurse Practices Act would seriously compromise the quality of care and outcomes.

Adult family homes are not qualified to care for people who need a nursing home level of care. Most "mom and pop" adult family homes are frightened that this legislation will result in over-regulation, and they are not prepared to care for people who need skilled nursing care.

Budget associated with 5622 calls for adding 105 staff to DSHS and the Area Agencies on Aging: it's unfair for them to grow, when direct care in nursing homes will be reduced.

Testified: PRO: Frank Occhinto, AARP; Cheryl Metcalf, Washington Assembly for Citizens with Disabilities; Cheryl Gavette, Catholic Community Services & Catholic Conference; Susan Roberts, Parent Coalition of Snohomish County; Nancy Melzer, The ARC, King Co.; Marie McKinney, The ARC, Snohomish Co.; Evan Iverson, Senior Lobby; Jeff Larsen, Residential Care Conference; Michael Doctor, ARC of Washington; Diane Lavier, Area Agency on Aging of Snohomish County; Carolyn Jannar, Area Agency on Aging of Snohomish County; Nancy James, Home Care Association of Washington (w/concerns); Wes Ingram, Washington State Residential Care Conference; Ruby Stamper, Inland Empire Support Group; Mark Weber, SNO-KING; Charles Reed, Aging and Adult Services, DSHS; Bev Hermanson, Washington Federation of State Employees (w/concerns); Tom Curtis, Washington Federation of State Employees (w/concerns); Dee Burke, Home Care Aides; Mary Sawicki, Association of Area Agencies on Aging; Karen Tynes, Washington Association of Homes for the Aging (w/concerns).

CON: Cindy McIntosh, Georgian House; Chris Callow, Sunrise Health Care Corp.; Richard Marcotte, Shuksan Convalescent Center; Jerry Reilly, Washington Health Care Association; William Chnyk, Quad-C Health Care; Gloria Dunn, Lisa Stuhenschach, Anna Stull, NADONA; Jim Bennett, Belmont Terrace; Jamie Eutsey, Park Manor Rehab; An McBride, Adult Family Home Coalition.