

HOUSE BILL REPORT

HB 2750

As Reported by House Committee On:
Health Care & Wellness
Appropriations

Title: An act relating to quality in assisted living facilities.

Brief Description: Concerning quality in assisted living facilities.

Sponsors: Representatives Tharinger, Johnson, Cody, Stonier, Slatter, Robinson, Jinkins, Appleton, Muri and Gregerson.

Brief History:

Committee Activity:

Health Care & Wellness: 1/24/18, 1/31/18 [DP];

Appropriations: 2/5/18, 2/6/18 [DP].

Brief Summary of Bill

- Creates the Assisted Living Facility Quality Council to make recommendations on measuring quality, providing consumer information, and reporting value related to assisted living facilities.
- Establishes the Assisted Living Facility Quality Measurement Program to provide information to consumers about assisted living facilities.
- Authorizes civil penalties up to \$3,000 per incident for violations of assisted living facility standards and up to \$10,000 for operating an assisted living facility without a license.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 10 members: Representatives Cody, Chair; Macri, Vice Chair; Clibborn, Harris, Jinkins, Riccelli, Robinson, Slatter, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 6 members: Representatives Schmick, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Caldier, DeBolt, MacEwen and Maycumber.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Chris Blake (786-7392).

Background:

The Department of Social and Health Services (Department) licenses assisted living facilities which are community-based residences that provide housing and basic services to seven or more residents. Residents of assisted living facilities are generally adults who require support and supervision. Each assisted living facility provides a different set of services, but generally includes: housekeeping, meals, laundry, activities, assistance with activities of daily living, health support services, and intermittent nursing services.

The Department may take regulatory action against an assisted living facility for violations of licensing and inspection standards and requirements. Actions may include refusing to issue or renew a license, imposing conditions on a license, imposing civil penalties up to \$100, suspending or revoking a license, suspending admissions through a stop placement order, or suspending admission of a specific category of residents through a stop placement order. Receipts from civil penalties must be deposited in the Assisted Living Facility Temporary Management Account (Account). Funds from the Account may be used for the payment of relocating residents to other facilities, payment to maintain the operation of an assisted living facility pending correction of deficiencies or closure, and reimbursement to residents for personal funds or property that has been lost or stolen.

Summary of Bill:

Assisted Living Facility Quality Council.

The Assisted Living Facility Quality Council (Council) is established. The Council must make recommendations on measuring quality, providing consumer information, and reporting value. The Council has the following 17 members:

- two members of the House of Representatives;
- two members of the Senate;
- the Assistant Secretary for the Aging and Long-Term Supports Administration;
- a representative of the Office of the State Long-Term Care Ombuds;
- a representative of the Office of Developmental Disabilities Ombuds;
- a representative of the State Protection and Advocacy Program;
- a representative of the Washington State Developmental Disabilities Council;
- a representative of the Governor;
- two representatives of organizations that represent assisted living facilities in Washington;
- a person with expertise in serving persons with mental health needs in an institutional setting;
- a person with expertise in serving persons with various forms of dementia;
- a health care provider with experience caring for geriatric patients;
- a representative of an organization that represents persons with Alzheimer's disease;
- and

- a representative of an organization that provides consumer advocacy services related to senior and aging issues.

The Council must submit an interim report to the Governor and the Legislature by December 1, 2018, and a final report by December 1, 2019. The final report must include recommendations related to:

- quality measures for all assisted living facilities;
- monitoring and tracking performance;
- providing information to consumers;
- incorporating quality measures into Medicaid rates;
- data metrics for assisted living facilities to report to the Department of Social and Health Services (Department);
- reporting of data; and
- the merits of a quality incentive payment program.

Assisted Living Facility Quality Measurement Program.

The Assisted Living Facilities Quality Measurement Program (Program) is established in the Department. The Program must provide staffing support to the Council and information to consumers about assisted living facilities. The consumer information must include information related to site visits, inspection and complaint investigation reports, and licenses and citations issued by the Department. The Program must submit an implementation report to the Governor and the Legislature by November 1, 2020, and an update by November 1, 2022.

Civil Penalties.

The \$100 limit on civil penalties against assisted living facilities for violations of licensing and inspection requirements is changed to a \$100 minimum civil penalty.

Civil penalties up to \$3,000 per incident are established for violations of assisted living facility licensing statutes and rules. Each day in which a substantially similar action occurs is a separate penalty. Penalties up to \$10,000 are established for the operation of an assisted living facility without a license.

The Department must adopt a method for determining appropriate sanctions to respond to deficiencies according to the severity and scope of the deficiencies. The method must include a tiered sanction grid to use when determining civil fines. The sanction grid must consider the extent of harm and the regularity of the occurrence.

In addition to other permitted uses, the Assisted Living Facility Temporary Management Account may be used for the protection of the health, safety, welfare, and property of residents of assisted living facilities that are not compliant with licensing standards.

Findings.

Legislative findings are made regarding the quality of Washington's long-term services and supports system, the need for consumers to have access to information about assisted living

facilities, the need for more data on the quality of care provided to residents of assisted living facilities who are Medicaid clients, the availability of information related to nursing homes and adult family homes, and the need for assisted living facilities to be held accountable for their residents.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There needs to be meaningful accountability for the standards of care that these facilities are obligated to provide to their residents. There should be a system for rewarding assisted living facilities that do their job and do it well. There needs to be a discussion about quality so there are expectations about what the state is getting for its money.

There must be transparency for consumers. Currently, consumers only have access to marketing materials, but do not have any way to compare one facility to another to best determine the kinds of care they need. Consumers can currently use the Department of Social and Health Services (Department) website to look up site visits and citation reports for nursing homes and adult family homes, but not for assisted living facilities. It is important for consumers to have a tool to use when making decisions for themselves or loved ones.

Having parity in civil fine amounts across the spectrum of care settings is important. Residents have had issues with assisted living facilities that have gone unaddressed, including unmet dietary needs and stolen items. The current penalty for an assisted living facility violation is \$100 regardless of the egregiousness of the offense. There should be something that is commensurate with the harm that has been done to the person. The current civil fine is so low that it is not a motivating factor for assisted living facilities to change and it is an insult to residents.

(Opposed) This legislation is premature since the assisted living facility workgroup has stated that it would be considering issues related to quality over the 2018 interim and this bill would preempt and supersede this process. It is not necessary to create and fund a new council to develop quality metrics when that work should start with the assisted living facility workgroup. This is putting an ambitious quality matrix in statute before the assisted living facility workgroup has an opportunity to discuss any meaningful details about the program.

Unlike the nursing facility quality incentive program, there are no established quality measures for use in assisted living facilities, so they would have to be created from scratch. Creating quality measures that are reliable and risk adjustable to the populations served would take a significant commitment of state resources and time to develop and implement. One set of quality measures may not apply to all assisted living facilities since

they are unique in defining the scope of services that they provide. Until assisted living facility rates in Medicaid are vastly improved, any system that enhances payment to achieve quality could have a disparate impact on the facilities serving the lowest income populations. This could create a pay-for-quality program in assisted living that diverts general fund dollars away from facilities that have the greatest need for money while favoring those that have less need.

(Other) There is support for consistency across all facilities regulated by the Department. There is support for the quality care and quality metrics in the bill, but it will take time to develop that for assisted living facilities.

Persons Testifying: (In support) Representative Tharinger, prime sponsor; Ian Davros; Melanie Smith, Washington State Long-Term Care Ombuds; and Scott Sigmon, LeadingAge Washington.

(Opposed) Robin Dale, Washington Health Care Association.

(Other) Candance Goehring, Aging and Long-Term Care Administration.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 17 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 15 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Graves, Haler, Harris, Manweller, Schmick, Taylor, Vick, Volz and Wilcox.

Staff: Mary Mulholland (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Health Care & Wellness:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The federal government is beginning to look at how Medicaid dollars are spent on Assisted Living Facilities (ALFs). The proposal strengthens oversight of care in ALFs, and is about making sure vulnerable individuals are safe and secure. The increased civil penalties provide parity with other long-term care settings and will affect only a few bad actors.

The accountability of ALFs will be improved by making sure that penalties are commensurate with the events of abuse or neglect that occur. The transparency of information on ALFs to consumers is improved and the process of establishing quality measures in ALFs will begin. Washington is one of 14 states that does not provide sufficient information on ALFs to consumers.

(Opposed) It is premature to identify quality measures for ALFs through a new commission. The work group that met over the 2017 interim to examine ALF rates considered the issue of quality, but did not reach agreement on what the quality metrics should be. This work group is committed to meeting over the 2018 interim and will return with recommendations for the Legislature in 2019.

There are currently no federal quality measures for ALFs and one provider association is unaware of other states with quality measures in place for ALFs. Creating quality measures that are risk-adjusted to the population will take time to develop and implement. One set of quality measures may not apply to all ALFs and unique measures may be needed to recognize the diversity of the providers. A single set of quality measures for all ALFs could risk harming providers that serve the greatest share of low-income seniors.

Persons Testifying: (In support) Representative Tharinger, prime sponsor; and Melanie Smith, Washington State Long Term Care Ombuds Program.

(Opposed) Jeff Gombosky, Washington Health Care Association; and Scott Sigmon, Leading Age Washington.

Persons Signed In To Testify But Not Testifying: None.