

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2154

53rd Legislature
1994 Regular Session

Passed by the House March 7, 1994
Yeas 90 Nays 0

Speaker of the
House of Representatives

Passed by the Senate March 4, 1994
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2154** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2154

AS AMENDED BY THE SENATE

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives R. Meyers, Valle, Carlson, Jones, Dellwo, Roland, Campbell, Dorn, Ogden, Kessler, Holm, Wineberry and Thibaudeau)

Read first time 02/08/94. Referred to Committee on .

1 AN ACT Relating to residents of long-term care facilities; amending
2 RCW 18.20.120; adding a new section to chapter 18.20 RCW; adding a new
3 section to chapter 18.51 RCW; adding a new section to chapter 72.36
4 RCW; adding a new section to chapter 70.128 RCW; adding a new chapter
5 to Title 70 RCW; and creating new sections.

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

7 NEW SECTION. **Sec. 1.** INTENT. The legislature recognizes that
8 long-term care facilities are a critical part of the state's long-term
9 care services system. It is the intent of the legislature that
10 individuals who reside in long-term care facilities receive appropriate
11 services, be treated with courtesy, and continue to enjoy their basic
12 civil and legal rights.

13 It is also the intent of the legislature that long-term care
14 facility residents have the opportunity to exercise reasonable control
15 over life decisions. The legislature finds that choice, participation,
16 privacy, and the opportunity to engage in religious, political, civic,
17 recreational, and other social activities foster a sense of self-worth
18 and enhance the quality of life for long-term care residents.

1 The legislature finds that the public interest would be best served
2 by providing the same basic resident rights in all long-term care
3 settings. Residents in nursing facilities are guaranteed certain
4 rights by federal law and regulation, 42 U.S.C. 1396r and 42 C.F.R.
5 part 483. It is the intent of the legislature to extend those basic
6 rights to residents in veterans' homes, boarding homes, and adult
7 family homes.

8 The legislature intends that a facility should care for its
9 residents in a manner and in an environment that promotes maintenance
10 or enhancement of each resident's quality of life. A resident should
11 have a safe, clean, comfortable, and homelike environment, allowing the
12 resident to use his or her personal belongings to the extent possible.

13 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
14 requires otherwise, the definitions in this section apply throughout
15 this chapter.

16 (1) "Department" means the department of state government
17 responsible for licensing the provider in question.

18 (2) "Facility" means a long-term care facility.

19 (3) "Long-term care facility" means a facility that is licensed or
20 required to be licensed under chapter 18.20, 72.36, or 70.128 RCW.

21 (4) "Resident" means the individual receiving services in a long-
22 term care facility, that resident's attorney in fact, guardian, or
23 other legal representative acting within the scope of their authority.

24 (5) "Physical restraint" means a manual method, obstacle, or
25 physical or mechanical device, material, or equipment attached or
26 adjacent to the resident's body that restricts freedom of movement or
27 access to his or her body is used for discipline or convenience and not
28 required to treat the resident's medical symptoms.

29 (6) "Chemical restraint" means a psychopharmacologic drug that is
30 used for discipline or convenience and not required to treat the
31 resident's medical symptoms.

32 (7) "Representative" means a person appointed under RCW 7.70.065.

33 NEW SECTION. **Sec. 3.** EXERCISE OF RIGHTS. The resident has a
34 right to a dignified existence, self-determination, and communication
35 with and access to persons and services inside and outside the
36 facility. A facility must protect and promote the rights of each
37 resident and assist the resident which include:

1 (1) The resident has the right to exercise his or her rights as a
2 resident of the facility and as a citizen or resident of the United
3 States and the state of Washington.

4 (2) The resident has the right to be free of interference,
5 coercion, discrimination, and reprisal from the facility in exercising
6 his or her rights.

7 (3) In the case of a resident adjudged incompetent by a court of
8 competent jurisdiction, the rights of the resident are exercised by the
9 person appointed to act on the resident's behalf.

10 (4) In the case of a resident who has not been adjudged incompetent
11 by a court of competent jurisdiction, a representative may exercise the
12 resident's rights to the extent provided by law.

13 NEW SECTION. **Sec. 4.** NOTICE OF RIGHTS AND SERVICES. (1) The
14 facility must inform the resident both orally and in writing in a
15 language that the resident understands of his or her rights and all
16 rules and regulations governing resident conduct and responsibilities
17 during the stay in the facility. The notification must be made prior
18 to or upon admission. Receipt of the information must be acknowledged
19 in writing.

20 (2) The resident or his or her legal representative has the right:

21 (a) Upon an oral or written request, to access all records
22 pertaining to himself or herself including clinical records within
23 twenty-four hours; and

24 (b) After receipt of his or her records for inspection, to purchase
25 at a cost not to exceed the community standard photocopies of the
26 records or portions of them upon request and two working days' advance
27 notice to the facility.

28 (3) The facility must inform each resident in writing before, or at
29 the time of admission, and at least once every twenty-four months
30 thereafter of: (a) Services available in the facility; (b) charges for
31 those services including charges for services not covered by the
32 facility's per diem rate or applicable public benefit programs; and (c)
33 the rules of operations required under section 15(2) of this act.

34 (4) The facility must furnish a written description of residents
35 rights that includes:

36 (a) A description of the manner of protecting personal funds, under
37 section 5 of this act;

1 (b) A posting of names, addresses, and telephone numbers of the
2 state survey and certification agency, the state licensure office, the
3 state ombudsmen program, and the protection and advocacy systems; and

4 (c) A statement that the resident may file a complaint with the
5 appropriate state licensing agency concerning resident abuse, neglect,
6 and misappropriation of resident property in the facility.

7 (5) Notification of changes.

8 (a) A facility must immediately consult with the resident's
9 physician, and if known, make reasonable efforts to notify the
10 resident's legal representative or an interested family member when
11 there is:

12 (i) An accident involving the resident which requires or has the
13 potential for requiring physician intervention;

14 (ii) A significant change in the resident's physical, mental, or
15 psychosocial status (i.e., a deterioration in health, mental, or
16 psychosocial status in either life-threatening conditions or clinical
17 complications).

18 (b) The facility must promptly notify the resident or the
19 resident's representative shall make reasonable efforts to notify an
20 interested family member, if known, when there is:

21 (i) A change in room or roommate assignment; or

22 (ii) A decision to transfer or discharge the resident from the
23 facility.

24 (c) The facility must record and update the address and phone
25 number of the resident's representative or interested family member,
26 upon receipt of notice from them.

27 NEW SECTION. **Sec. 5.** PROTECTION OF RESIDENT'S FUNDS. (1) The
28 resident has the right to manage his or her financial affairs, and the
29 facility may not require residents to deposit their personal funds with
30 the facility.

31 (2) Upon written authorization of a resident, if the facility
32 agrees to manage the resident's personal funds, the facility must hold,
33 safeguard, manage, and account for the personal funds of the resident
34 deposited with the facility as specified in this section.

35 (3)(a) The facility must deposit a resident's personal funds in
36 excess of one hundred dollars in an interest-bearing account or
37 accounts that is separate from any of the facility's operating
38 accounts, and that credits all interest earned on residents' funds to

1 that account. In pooled accounts, there must be a separate accounting
2 for each resident's share.

3 (b) The facility must maintain a resident's personal funds that do
4 not exceed one hundred dollars in a noninterest-bearing account,
5 interest-bearing account, or petty cash fund.

6 (4) The facility must establish and maintain a system that assures
7 a full and complete and separate accounting of each resident's personal
8 funds entrusted to the facility on the resident's behalf.

9 (a) The system must preclude any commingling of resident funds with
10 facility funds or with the funds of any person other than another
11 resident.

12 (b) The individual financial record must be available on request to
13 the resident or his or her legal representative.

14 (5) Upon the death of a resident with a personal fund deposited
15 with the facility the facility must convey within forty-five days the
16 resident's funds, and a final accounting of those funds, to the
17 individual or probate jurisdiction administering the resident's estate.

18 NEW SECTION. **Sec. 6.** PRIVACY AND CONFIDENTIALITY. The resident
19 has the right to personal privacy and confidentiality of his or her
20 personal and clinical records.

21 (1) Personal privacy includes accommodations, medical treatment,
22 written and telephone communications, personal care, visits, and
23 meetings of family and resident groups. This does not require the
24 facility to provide a private room for each resident however, a
25 resident cannot be prohibited by the facility from meeting with guests
26 in his or her bedroom if no roommates object.

27 (2) The resident may approve or refuse the release of personal and
28 clinical records to an individual outside the facility unless otherwise
29 provided by law.

30 NEW SECTION. **Sec. 7.** GRIEVANCES. A resident has the right to:

31 (1) Voice grievances. Such grievances include those with respect to
32 treatment that has been furnished as well as that which has not been
33 furnished; and

34 (2) Prompt efforts by the facility to resolve grievances the
35 resident may have, including those with respect to the behavior of
36 other residents.

1 NEW SECTION. **Sec. 8.** EXAMINATION OF SURVEY OR INSPECTION RESULTS.

2 A resident has the right to:

3 (1) Examine the results of the most recent survey or inspection of
4 the facility conducted by federal or state surveyors or inspectors and
5 plans of correction in effect with respect to the facility. A notice
6 that the results are available must be publicly posted with the
7 facility's state license, and the results must be made available for
8 examination by the facility in a place readily accessible to residents;
9 and

10 (2) Receive information from agencies acting as client advocates,
11 and be afforded the opportunity to contact these agencies.

12 NEW SECTION. **Sec. 9.** MAIL AND TELEPHONE. The resident has the
13 right to privacy in communications, including the right to:

14 (1) Send and promptly receive mail that is unopened;

15 (2) Have access to stationery, postage, and writing implements at
16 the resident's own expense; and

17 (3) Have reasonable access to the use of a telephone where calls
18 can be made without being overheard.

19 NEW SECTION. **Sec. 10.** ACCESS AND VISITATION RIGHTS. (1) The
20 resident has the right and the facility must not interfere with access
21 to any resident by the following:

22 (a) Any representative of the state;

23 (b) The resident's individual physician;

24 (c) The state long-term care ombudsman as established under chapter
25 43.190 RCW;

26 (d) The agency responsible for the protection and advocacy system
27 for developmentally disabled individuals as established under part C of
28 the developmental disabilities assistance and bill of rights act;

29 (e) The agency responsible for the protection and advocacy system
30 for mentally ill individuals as established under the protection and
31 advocacy for mentally ill individuals act;

32 (f) Subject to reasonable restrictions to protect the rights of
33 others and to the resident's right to deny or withdraw consent at any
34 time, immediate family or other relatives of the resident and others
35 who are visiting with the consent of the resident;

36 (g) The agency responsible for the protection and advocacy system
37 for individuals with disabilities as established under section 509 of

1 the rehabilitation act of 1973, as amended, who are not served under
2 the mandates of existing protection and advocacy systems created under
3 federal law.

4 (2) The facility must provide reasonable access to a resident by
5 his or her representative or an entity or individual that provides
6 health, social, legal, or other services to the resident, subject to
7 the resident's right to deny or withdraw consent at any time.

8 (3) The facility must allow representatives of the state ombudsman
9 to examine a resident's clinical records with the permission of the
10 resident or the resident's legal representative, and consistent with
11 state and federal law.

12 NEW SECTION. **Sec. 11.** PERSONAL PROPERTY. (1) The resident has
13 the right to retain and use personal possessions, including some
14 furnishings, and appropriate clothing, as space permits, unless to do
15 so would infringe upon the rights or health and safety of other
16 residents.

17 (2) The facility shall, upon request, provide the resident with a
18 lockable container or other lockable storage space for small items of
19 personal property, unless the resident's individual room is lockable
20 with a key issued to the resident.

21 NEW SECTION. **Sec. 12.** TRANSFER AND DISCHARGE REQUIREMENTS. (1)
22 The facility must permit each resident to remain in the facility, and
23 not transfer or discharge the resident from the facility unless:

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

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

27 (c) The health of individuals in the facility would otherwise be
28 endangered;

29 (d) The resident has failed to make the required payment for his or
30 her stay; or

31 (e) The facility ceases to operate.

32 (2) Before a facility transfers or discharges a resident, the
33 facility must:

34 (a) Notify the resident and representative and make a reasonable
35 effort to notify, if known, an interested family member of the transfer
36 or discharge and the reasons for the move in writing and in a language
37 and manner they understand;

1 (b) Record the reasons in the resident's record; and
2 (c) Include in the notice the items described in subsection (4) of
3 this section.

4 (3)(a) Except when specified in this subsection, the notice of
5 transfer of discharge required under subsection (2) of this section
6 must be made by the facility at least thirty days before the resident
7 is transferred or discharged.

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

10 (i) The safety of individuals in the facility would be endangered;
11 (ii) The health of individuals in the facility would be endangered;
12 (iii) An immediate transfer or discharge is required by the
13 resident's urgent medical needs; or

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

15 (4) The written notice specified in subsection (2) of this section
16 must include the following:

17 (a) The reason for transfer or discharge;

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

19 (c) The location to which the resident is transferred or
20 discharged;

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

23 (e) For residents with developmental disabilities, the mailing
24 address and telephone number of the agency responsible for the
25 protection and advocacy of developmentally disabled individuals
26 established under part C of the developmental disabilities assistance
27 and bill of rights act; and

28 (f) For residents who are mentally ill, the mailing address and
29 telephone number of the agency responsible for the protection and
30 advocacy of mentally ill individuals established under the protection
31 and advocacy for mentally ill individuals act.

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

35 (6) A resident discharged in violation of this section has the
36 right to be readmitted immediately upon the first availability of a
37 gender-appropriate bed in the facility.

1 NEW SECTION. **Sec. 13.** RESTRAINTS. The resident has the right to
2 be free from physical restraint or chemical restraint. This section
3 does not require or prohibit facility staff from reviewing the judgment
4 of the resident's physician in prescribing psychopharmacologic
5 medications.

6 NEW SECTION. **Sec. 14.** ABUSE. The resident has the right to be
7 free from verbal, sexual, physical, and mental abuse, corporal
8 punishment, and involuntary seclusion.

9 (1) The facility must not use verbal, mental, sexual, or physical
10 abuse, including corporal punishment or involuntary seclusion.

11 (2) Subject to available resources, the department of social and
12 health services shall provide background checks required by RCW
13 43.43.842 for employees of facilities licensed under chapter 18.20 RCW
14 without charge to the facility.

15 NEW SECTION. **Sec. 15.** QUALITY OF LIFE. (1) The facility must
16 promote care for residents in a manner and in an environment that
17 maintains or enhances each resident's dignity and respect in full
18 recognition of his or her individuality.

19 (2) Within reasonable facility rules designed to protect the rights
20 and quality of life of residents, the resident has the right to:

21 (a) Choose activities, schedules, and health care consistent with
22 his or her interests, assessments, and plans of care;

23 (b) Interact with members of the community both inside and outside
24 the facility;

25 (c) Make choices about aspects of his or her life in the facility
26 that are significant to the resident;

27 (d) Wear his or her own clothing and determine his or her own
28 dress, hair style, or other personal effects according to individual
29 preference;

30 (e) Unless adjudged incompetent or otherwise found to be legally
31 incapacitated, participate in planning care and treatment or changes in
32 care and treatment;

33 (f) Unless adjudged incompetent or otherwise found to be legally
34 incapacitated, to direct his or her own service plan and changes in the
35 service plan, and to refuse any particular service so long as such
36 refusal is documented in the record of the resident.

1 (3)(a) A resident has the right to organize and participate in
2 resident groups in the facility.

3 (b) A resident's family has the right to meet in the facility with
4 the families of other residents in the facility.

5 (c) The facility must provide a resident or family group, if one
6 exists, with meeting space.

7 (d) Staff or visitors may attend meetings at the group's
8 invitation.

9 (e) When a resident or family group exists, the facility must
10 listen to the views and act upon the grievances and recommendations of
11 residents and families concerning proposed policy and operational
12 decisions affecting resident care and life in the facility.

13 (f) The resident has the right to refuse to perform services for
14 the facility except as voluntarily agreed by the resident and the
15 facility in the resident's service plan.

16 (4) A resident has the right to participate in social, religious,
17 and community activities that do not interfere with the rights of other
18 residents in the facility.

19 (5) A resident has the right to:

20 (a) Reside and receive services in the facility with reasonable
21 accommodation of individual needs and preferences, except when the
22 health or safety of the individual or other residents would be
23 endangered; and

24 (b) Receive notice before the resident's room or roommate in the
25 facility is changed.

26 (6) A resident has the right to share a double room with his or her
27 spouse when married residents live in the same facility and both
28 spouses consent to the arrangement.

29 NEW SECTION. **Sec. 16.** FEE DISCLOSURE--DEPOSITS. (1) Prior to
30 admission, all long-term care facilities or nursing facilities licensed
31 under chapter 18.51 RCW that require payment of an admissions fee,
32 deposit, or a minimum stay fee, by or on behalf of a person seeking
33 admissions to the long-term care facility or nursing facility, shall
34 provide the resident, or his or her representative, full disclosure in
35 writing of the long-term care facility or nursing facility's schedule
36 of charges for items and services provided by the facility and the
37 amount of any admissions fees, deposits, or minimum stay fees. In
38 addition, the long-term care facility or nursing facility shall also

1 fully disclose in writing prior to admission what portion of the
2 deposits, admissions fees, or minimum stay fees will be refunded to the
3 resident or his or her representative if the resident leaves the long-
4 term care facility or nursing facility. If a resident, during the first
5 thirty days of residence, dies or is hospitalized and does not return
6 to the facility, the facility shall refund any deposit already paid
7 less the facility's per diem rate for the days the resident actually
8 resided or reserved a bed in the facility notwithstanding any minimum
9 stay policy. All long-term care facilities or nursing facilities
10 covered under this section are required to refund any and all refunds
11 due the resident or their representative within thirty days from the
12 resident's date of discharge from the facility. Nothing in this
13 section applies to provisions in contracts negotiated between a nursing
14 facility or long-term care facility and a certified health plan, health
15 or disability insurer, health maintenance organization, managed care
16 organization, or similar entities.

17 (2) Where a long-term care facility or nursing facility requires
18 the execution of an admission contract by or on behalf of an individual
19 seeking admission to the facility, the terms of the contract shall be
20 consistent with the requirements of this section.

21 NEW SECTION. **Sec. 17.** LIABILITY MAY NOT BE WAIVED. No long-term
22 care facility or nursing facility licensed under chapter 18.51 RCW
23 shall require residents to sign waivers of potential liability for
24 losses of personal property.

25 NEW SECTION. **Sec. 18.** OMBUDSMAN IMPLEMENTATION DUTIES. The long-
26 term care ombudsman shall monitor implementation of this chapter and
27 determine the degree to which veterans' homes, nursing facilities,
28 adult family homes, and boarding homes ensure that residents are able
29 to exercise their rights. The long-term care ombudsman shall consult
30 with the departments of health and social and health services, long-
31 term care facility organizations, resident groups, and senior and
32 disable citizen organizations and report to the house of
33 representatives committee on health care and the senate committee on
34 health and human services concerning the implementation of this chapter
35 with any applicable recommendations by July 1, 1995.

1 NEW SECTION. **Sec. 19.** NONJUDICIAL REMEDIES THROUGH REGULATORY
2 AUTHORITIES ENCOURAGED--REMEDIES CUMULATIVE. The legislature intends
3 that long-term care facility or nursing home residents, their family
4 members or guardians, the long-term care ombudsman, protection and
5 advocacy personnel identified in section 12(4) (e) and (f), and others
6 who may seek to assist long-term care facility or nursing home
7 residents, use the least formal means available to satisfactorily
8 resolve disputes that may arise regarding the rights conferred by the
9 provisions of sections 1 through 24 of this act. Wherever feasible,
10 direct discussion with facility personnel or administrators should be
11 employed. Failing that, and where feasible, recourse may be sought
12 through state or federal long-term care or nursing home licensing or
13 other regulatory authorities. However, the procedures suggested in
14 this section are cumulative and shall not restrict an agency or person
15 from seeking a remedy provided by law or from obtaining additional
16 relief based on the same facts, including any remedy available to an
17 individual at common law. This act is not intended to, and shall not
18 be construed to, create any right of action on the part of any
19 individual beyond those in existence under any common law or statutory
20 doctrine. This act is not intended to, and shall not be construed to,
21 operate in derogation of any right of action on the part of any
22 individual in existence on the effective date of this act.

23 NEW SECTION. **Sec. 20.** RIGHTS ARE MINIMAL. The rights set forth
24 in this chapter are the minimal rights guaranteed to all residents of
25 long-term care facilities, and are not intended to diminish rights set
26 forth in other state or federal laws that may contain additional
27 rights.

28 NEW SECTION. **Sec. 21.** A new section is added to chapter 18.20 RCW
29 to read as follows:

30 BOARDING HOMES. Sections 1 through 4, 5(1), and 6 through 20 of
31 this act apply to this chapter and persons regulated under this
32 chapter.

33 NEW SECTION. **Sec. 22.** A new section is added to chapter 18.51 RCW
34 to read as follows:

35 NURSING HOMES. Sections 16 through 20 of this act apply to this
36 chapter and persons regulated under this chapter.

1 NEW SECTION. **Sec. 23.** A new section is added to chapter 72.36 RCW
2 to read as follows:

3 VETERAN HOME. Chapter 70.-- RCW (sections 1 through 20 of this
4 act) applies to this chapter and persons regulated under this chapter.

5 NEW SECTION. **Sec. 24.** A new section is added to chapter 70.128
6 RCW to read as follows:

7 ADULT HOMES. Sections 1 through 4, 5(1), and 6 through 20 of this
8 act apply to this chapter and persons regulated under this chapter.

9 **Sec. 25.** RCW 18.20.120 and 1957 c 253 s 12 are each amended to
10 read as follows:

11 All information received by the department or authorized health
12 department through filed reports, inspections, or as otherwise
13 authorized under this chapter, shall not be disclosed publicly in any
14 manner as to identify individuals or boarding homes, except ((~~in a~~
15 ~~proceeding involving the question of licensure~~)) at the specific
16 request of a member of the public and disclosure is consistent with RCW
17 42.17.260(1).

18 NEW SECTION. **Sec. 26.** SEVERABILITY. If any provision of this act
19 or its application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 27.** FEDERAL SEVERABILITY. If any part of this
23 act is found to be in conflict with federal requirements that are a
24 prescribed condition to the allocation of federal funds to the state,
25 the conflicting part of this act is inoperative solely to the extent of
26 the conflict and with respect to the agencies directly affected, and
27 this finding does not affect the operation of the remainder of this act
28 in its application to the agencies concerned. The rules under this act
29 shall meet federal requirements that are a necessary condition to the
30 receipt of federal funds by the state.

31 NEW SECTION. **Sec. 28.** CAPTIONS. Captions as used in this act
32 constitute no part of the law.

1 NEW SECTION. **Sec. 29.** CODIFICATION. Sections 1 through 20 of
2 this act shall constitute a new chapter in Title 70 RCW.

3 NEW SECTION. **Sec. 30.** Nothing in this act shall affect the
4 classifying of an adult family home for the purposes of zoning.

--- END ---