

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2668

Chapter 146, Laws of 2008

(partial veto)

60th Legislature
2008 Regular Session

LONG-TERM CARE

EFFECTIVE DATE: 06/12/08

Passed by the House March 10, 2008
Yeas 94 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 7, 2008
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved March 25, 2008, 1:41 p.m.,
with the exception of sections 6 and 9
which are vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2668** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 25, 2008

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2668

AS AMENDED BY THE SENATE

Passed Legislature - 2008 Regular Session

State of Washington **60th Legislature** **2008 Regular Session**

By House Appropriations (originally sponsored by Representatives Morrell, Green, Cody, Hunt, McCoy, Wallace, Pedersen, Campbell, McIntire, Conway, Simpson, Kenney, and Darneille)

READ FIRST TIME 02/11/08.

1 AN ACT Relating to long-term care; amending RCW 74.41.040,
2 18.20.350, 74.41.050, 74.38.030, 74.38.040, 18.79.260, and 18.88A.210;
3 adding a new section to chapter 43.70 RCW; adding new sections to
4 chapter 74.39A RCW; adding a new section to chapter 74.34 RCW; adding
5 a new section to chapter 74.09 RCW; and creating new sections.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that Washingtonians
8 sixty-five years of age and older will nearly double in the next twenty
9 years, from eleven percent of our population today to almost twenty
10 percent of our population in 2025. Younger people with disabilities
11 will also require supportive long-term care services. Nationally,
12 young people with a disability account for thirty seven percent of the
13 total number of people who need long-term care.

14 The legislature further finds that to address this increasing need,
15 the long-term care system should support autonomy and self-
16 determination, and support the role of informal caregivers and
17 families. It should promote personal planning and savings combined
18 with public support, when needed. It should also include culturally

1 appropriate, high quality information, services, and supports delivered
2 in a cost-effective and efficient manner.

3 The legislature further finds that more than fifteen percent of
4 adults over age sixty-five in Washington state have diabetes. Current
5 nurse delegation statutes limit the ability of elderly and disabled
6 persons with diabetes to remain in their own homes or in other
7 home-like long-term care settings. It is the intent of the legislature
8 to modify nurse delegation statutes to enable elderly persons and
9 persons with disabilities who have diabetes to continue to reside in
10 their own home or other home-like settings.

11 The legislature further finds that the long-term care system should
12 utilize evidence-based practices for the prevention and management of
13 chronic disease to improve the general health of Washingtonians over
14 their lifetime and reduce health care and long-term care costs related
15 to ineffective chronic care management.

16 **Sec. 2.** RCW 74.41.040 and 1987 c 409 s 3 are each amended to read
17 as follows:

18 The department shall administer this chapter and shall establish
19 such rules and standards as the department deems necessary in carrying
20 out this chapter. The department shall not require the development of
21 plans of care or discharge plans by nursing homes or adult family homes
22 providing respite care service under this chapter. Boarding homes
23 providing respite care services shall comply with the assessment and
24 plan of care provisions of RCW 18.20.350.

25 The department shall develop standards for the respite program in
26 conjunction with the selected area agencies on aging. The program
27 standards shall serve as the basis for soliciting bids, entering into
28 subcontracts, and developing sliding fee scales to be used in
29 determining the ability of eligible participants to participate in
30 paying for respite care.

31 **Sec. 3.** RCW 18.20.350 and 2004 c 142 s 7 are each amended to read
32 as follows:

33 (1) The boarding home licensee shall conduct a preadmission
34 assessment for each resident applicant. The preadmission assessment
35 shall include the following information, unless unavailable despite the
36 best efforts of the licensee:

- 1 (a) Medical history;
- 2 (b) Necessary and contraindicated medications;
- 3 (c) A licensed medical or health professional's diagnosis, unless
- 4 the individual objects for religious reasons;
- 5 (d) Significant known behaviors or symptoms that may cause concern
- 6 or require special care;
- 7 (e) Mental illness diagnosis, except where protected by
- 8 confidentiality laws;
- 9 (f) Level of personal care needs;
- 10 (g) Activities and service preferences; and
- 11 (h) Preferences regarding other issues important to the resident
- 12 applicant, such as food and daily routine.

13 (2) The boarding home licensee shall complete the preadmission

14 assessment before admission unless there is an emergency. If there is

15 an emergency admission, the preadmission assessment shall be completed

16 within five days of the date of admission. For purposes of this

17 section, "emergency" includes, but is not limited to: Evening,

18 weekend, or Friday afternoon admissions if the resident applicant would

19 otherwise need to remain in an unsafe setting or be without adequate

20 and safe housing.

21 (3) The boarding home licensee shall complete an initial resident

22 service plan upon move-in to identify the resident's immediate needs

23 and to provide direction to staff and caregivers relating to the

24 resident's immediate needs. The initial resident service plan shall

25 include as much information as can be obtained, under subsection (1) of

26 this section.

27 (4) When a facility provides respite care, before or at the time of

28 admission, the facility must obtain sufficient information to meet the

29 individual's anticipated needs. At a minimum, such information must

30 include:

31 (a) The name, address, and telephone number of the individual's

32 attending physician, and alternate physician if any;

33 (b) Medical and social history, which may be obtained from a

34 respite care assessment and service plan performed by a case manager

35 designated by an area agency on aging under contract with the

36 department, and mental and physical assessment data;

37 (c) Physician's orders for diet, medication, and routine care

38 consistent with the individual's status on admission;

1 (d) Ensure the individuals have assessments performed, where
2 needed, and where the assessment of the individual reveals symptoms of
3 tuberculosis, follow required tuberculosis testing requirements; and

4 (e) With the participation of the individual and, where
5 appropriate, their representative, develop a plan of care to maintain
6 or improve their health and functional status during their stay in the
7 facility.

8 **Sec. 4.** RCW 74.41.050 and 2000 c 207 s 4 are each amended to read
9 as follows:

10 The department shall contract with area agencies on aging or other
11 appropriate agencies to conduct family caregiver long-term care
12 information and support services to the extent of available funding.
13 The responsibilities of the agencies shall include but not be limited
14 to: (1) Administering a program of family caregiver long-term care
15 information and support services; ~~((and))~~ (2) negotiating rates of
16 payment, administering sliding-fee scales to enable eligible
17 participants to participate in paying for respite care, and arranging
18 for respite care information, training, and other support services; and
19 (3) developing an evidence-based tailored caregiver assessment and
20 referral tool. In evaluating the need for respite services,
21 consideration shall be given to the mental and physical ability of the
22 caregiver to perform necessary caregiver functions.

23 **Sec. 5.** RCW 74.38.030 and 1975-'76 2nd ex.s. c 131 s 3 are each
24 amended to read as follows:

25 (1) The program of community based services authorized under this
26 chapter shall be administered by the department. Such services may be
27 provided by the department or through purchase of service contracts,
28 vendor payments or direct client grants.

29 The department shall, under stipend or grant programs provided
30 under RCW 74.38.060, utilize, to the maximum staffing level possible,
31 eligible persons in its administration, supervision, and operation.

32 (2) The department shall be responsible for planning, coordination,
33 monitoring and evaluation of services provided under this chapter but
34 shall avoid duplication of services.

35 (3) The department may designate area agencies in cities of not
36 less than twenty thousand population or in regional areas within the

1 state. These agencies shall submit area plans, as required by the
2 department. For area plans prepared for submission in 2009, and
3 thereafter, the area agencies may include the findings and
4 recommendations of area-wide planning initiatives that they may
5 undertake with appropriate local and regional partners regarding the
6 changing age demographics of their area and the implications of this
7 demographic change for public policies and public services. They shall
8 also submit, in the manner prescribed by the department, such other
9 program or fiscal data as may be required.

10 (4) The department shall develop an annual state plan pursuant to
11 the Older Americans Act of 1965, as now or hereafter amended. This
12 plan shall include, but not be limited to:

13 (a) Area agencies' programs and services approved by the
14 department;

15 (b) Other programs and services authorized by the department; and

16 (c) Coordination of all programs and services.

17 (5) The department shall establish rules and regulations for the
18 determination of low income eligible persons. Such determination shall
19 be related to need based on the initial resources and subsequent income
20 of the person entering into a program or service. This determination
21 shall not prevent the eligible person from utilizing a program or
22 service provided by the department or area agency. However, if the
23 determination is that such eligible person is nonlow income, the
24 provision of RCW 74.38.050 shall be applied as of the date of such
25 determination.

26 ***Sec. 6. RCW 74.38.040 and 1983 c 290 s 14 are each amended to read**
27 **as follows:**

28 **The community based services for low-income eligible persons**
29 **provided by the department or the respective area agencies may include:**

30 **(1) Access services designed to provide identification of eligible**
31 **persons, assessment of individual needs, reference to the appropriate**
32 **service, and follow-up service where required. These services shall**
33 **include information and referral, outreach, transportation and**
34 **counseling. They shall also include long-term care planning and**
35 **options counseling, information and crisis intervention, and**
36 **streamlined assistance to access a wide array of public and private**

1 community-based services. Services would be available to individuals,
2 concerned families or friends, or professionals working with issues
3 related to aging, disabilities, and caregivers;

4 (2) Day care offered on a regular, recurrent basis. General
5 nursing, rehabilitation, personal care, nutritional services, social
6 casework, mental health as provided pursuant to chapter 71.24 RCW
7 and/or limited transportation services may be made available within
8 this program;

9 (3) In-home care for persons, including basic health care;
10 performance of various household tasks and other necessary chores, or,
11 a combination of these services;

12 (4) Counseling on death for the terminally ill and care and
13 attendance at the time of death; except, that this is not to include
14 reimbursement for the use of life-sustaining mechanisms;

15 (5) Health services which will identify health needs and which are
16 designed to avoid institutionalization; assist in securing admission to
17 medical institutions or other health related facilities when required;
18 and, assist in obtaining health services from public or private
19 agencies or providers of health services. These services shall include
20 health screening and evaluation, in-home services, health education,
21 and such health appliances which will further the independence and
22 well-being of the person;

23 (6) The provision of low cost, nutritionally sound meals in central
24 locations or in the person's home in the instance of incapacity. Also,
25 supportive services may be provided in nutritional education, shopping
26 assistance, diet counseling and other services to sustain the
27 nutritional well-being of these persons;

28 (7) The provisions of services to maintain a person's home in a
29 state of adequate repair, insofar as is possible, for their safety and
30 comfort. These services shall be limited, but may include housing
31 counseling, minor repair and maintenance, and moving assistance when
32 such repair will not attain standards of health and safety, as
33 determined by the department;

34 (8) Civil legal services, as limited by RCW 2.50.100, for
35 counseling and representation in the areas of housing, consumer
36 protection, public entitlements, property, and related fields of law;

37 (9) Long-term care ombudsman programs for residents of all long-
38 term care facilities.

*Sec. 6 was vetoed. See message at end of chapter.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 74.34 RCW
2 to read as follows:

3 (1) The department may conduct a vulnerable adult fatality review
4 in the event of a death of a vulnerable adult when the department has
5 reason to believe that the death of the vulnerable adult may be related
6 to the abuse, abandonment, exploitation, or neglect of the vulnerable
7 adult, or may be related to the vulnerable adult's self-neglect, and
8 the vulnerable adult was:

9 (a) Receiving home and community-based services in his or her own
10 home, described under chapters 74.39 and 74.39A RCW, within sixty days
11 preceding his or her death; or

12 (b) Living in his or her own home and was the subject of a report
13 under this chapter received by the department within twelve months
14 preceding his or her death.

15 (2) When conducting a vulnerable adult fatality review of a person
16 who had been receiving hospice care services before the person's death,
17 the review shall provide particular consideration to the similarities
18 between the signs and symptoms of abuse and those of many patients
19 receiving hospice care services.

20 (3) All files, reports, records, communications, and working papers
21 used or developed for purposes of a fatality review are confidential
22 and not subject to disclosure pursuant to RCW 74.34.095.

23 (4) The department may adopt rules to implement this section.

24 **Sec. 11.** RCW 18.79.260 and 2003 c 140 s 2 are each amended to read
25 as follows:

26 (1) A registered nurse under his or her license may perform for
27 compensation nursing care, as that term is usually understood, to
28 individuals with illnesses, injuries, or disabilities.

29 (2) A registered nurse may, at or under the general direction of a
30 licensed physician and surgeon, dentist, osteopathic physician and
31 surgeon, naturopathic physician, podiatric physician and surgeon,
32 physician assistant, osteopathic physician assistant, or advanced
33 registered nurse practitioner acting within the scope of his or her
34 license, administer medications, treatments, tests, and inoculations,
35 whether or not the severing or penetrating of tissues is involved and
36 whether or not a degree of independent judgment and skill is required.

1 Such direction must be for acts which are within the scope of
2 registered nursing practice.

3 (3) A registered nurse may delegate tasks of nursing care to other
4 individuals where the registered nurse determines that it is in the
5 best interest of the patient.

6 (a) The delegating nurse shall:

7 (i) Determine the competency of the individual to perform the
8 tasks;

9 (ii) Evaluate the appropriateness of the delegation;

10 (iii) Supervise the actions of the person performing the delegated
11 task; and

12 (iv) Delegate only those tasks that are within the registered
13 nurse's scope of practice.

14 (b) A registered nurse, working for a home health or hospice agency
15 regulated under chapter 70.127 RCW, may delegate the application,
16 instillation, or insertion of medications to a registered or certified
17 nursing assistant under a plan of care.

18 (c) Except as authorized in (b) or (e) of this subsection, a
19 registered nurse may not delegate the administration of medications.
20 Except as authorized in (e) of this subsection, a registered nurse may
21 not delegate acts requiring substantial skill, and may not delegate
22 piercing or severing of tissues. Acts that require nursing judgment
23 shall not be delegated.

24 (d) No person may coerce a nurse into compromising patient safety
25 by requiring the nurse to delegate if the nurse determines that it is
26 inappropriate to do so. Nurses shall not be subject to any employer
27 reprisal or disciplinary action by the nursing care quality assurance
28 commission for refusing to delegate tasks or refusing to provide the
29 required training for delegation if the nurse determines delegation may
30 compromise patient safety.

31 (e) For delegation in community-based care settings or in-home care
32 settings, a registered nurse may delegate nursing care tasks only to
33 registered or certified nursing assistants. Simple care tasks such as
34 blood pressure monitoring, personal care service, diabetic insulin
35 device set up, verbal verification of insulin dosage for sight-impaired
36 individuals, or other tasks as defined by the nursing care quality
37 assurance commission are exempted from this requirement.

1 (i) "Community-based care settings" includes: Community
2 residential programs for ~~((the developmentally disabled))~~ people with
3 developmental disabilities, certified by the department of social and
4 health services under chapter 71A.12 RCW; adult family homes licensed
5 under chapter 70.128 RCW; and boarding homes licensed under chapter
6 18.20 RCW. Community-based care settings do not include acute care or
7 skilled nursing facilities.

8 (ii) "In-home care settings" include an individual's place of
9 temporary or permanent residence, but does not include acute care or
10 skilled nursing facilities, and does not include community-based care
11 settings as defined in (e)(i) of this subsection.

12 (iii) Delegation of nursing care tasks in community-based care
13 settings and in-home care settings is only allowed for individuals who
14 have a stable and predictable condition. "Stable and predictable
15 condition" means a situation in which the individual's clinical and
16 behavioral status is known and does not require the frequent presence
17 and evaluation of a registered nurse.

18 (iv) The determination of the appropriateness of delegation of a
19 nursing task is at the discretion of the registered nurse. ~~((However))~~
20 Other than delegation of the administration of insulin by injection for
21 the purpose of caring for individuals with diabetes, the administration
22 of medications by injection, sterile procedures, and central line
23 maintenance may never be delegated.

24 (v) When delegating insulin injections under this section, the
25 registered nurse delegator must instruct the individual regarding
26 proper injection procedures and the use of insulin, demonstrate proper
27 injection procedures, and must supervise and evaluate the individual
28 performing the delegated task weekly during the first four weeks of
29 delegation of insulin injections. If the registered nurse delegator
30 determines that the individual is competent to perform the injection
31 properly and safely, supervision and evaluation shall occur at least
32 every ninety days thereafter.

33 (vi) The registered nurse shall verify that the nursing assistant
34 has completed the required core nurse delegation training required in
35 chapter 18.88A RCW prior to authorizing delegation.

36 ~~((+vi))~~ (vii) The nurse is accountable for his or her own
37 individual actions in the delegation process. Nurses acting within the

1 protocols of their delegation authority are immune from liability for
2 any action performed in the course of their delegation duties.

3 ~~((vii))~~ (viii) Nursing task delegation protocols are not intended
4 to regulate the settings in which delegation may occur, but are
5 intended to ensure that nursing care services have a consistent
6 standard of practice upon which the public and the profession may rely,
7 and to safeguard the authority of the nurse to make independent
8 professional decisions regarding the delegation of a task.

9 (f) The nursing care quality assurance commission may adopt rules
10 to implement this section.

11 (4) Only a person licensed as a registered nurse may instruct
12 nurses in technical subjects pertaining to nursing.

13 (5) Only a person licensed as a registered nurse may hold herself
14 or himself out to the public or designate herself or himself as a
15 registered nurse.

16 **Sec. 12.** RCW 18.88A.210 and 2003 c 140 s 5 are each amended to
17 read as follows:

18 (1) A nursing assistant meeting the requirements of this section
19 who provides care to individuals in community-based care settings or
20 in-home care settings, as defined in RCW 18.79.260(3), may accept
21 delegation of nursing care tasks by a registered nurse as provided in
22 RCW 18.79.260(3).

23 (2) For the purposes of this section, "nursing assistant" means a
24 nursing assistant-registered or a nursing assistant-certified. Nothing
25 in this section may be construed to affect the authority of nurses to
26 delegate nursing tasks to other persons, including licensed practical
27 nurses, as authorized by law.

28 (3)(a) Before commencing any specific nursing care tasks authorized
29 under this chapter, the nursing assistant must ~~((a))~~ (i) provide to
30 the delegating nurse a certificate of completion issued by the
31 department of social and health services indicating the completion of
32 basic core nurse delegation training, ~~((b))~~ (ii) be regulated by the
33 department of health pursuant to this chapter, subject to the uniform
34 disciplinary act under chapter 18.130 RCW, and ~~((e))~~ (iii) meet any
35 additional training requirements identified by the nursing care quality
36 assurance commission. Exceptions to these training requirements must
37 adhere to RCW 18.79.260(3)(e)~~((v))~~ (vi).

1 (b) In addition to meeting the requirements of (a) of this
2 subsection, before commencing the care of individuals with diabetes
3 that involves administration of insulin by injection, the nursing
4 assistant must provide to the delegating nurse a certificate of
5 completion issued by the department of social and health services
6 indicating completion of specialized diabetes nurse delegation
7 training. The training must include, but is not limited to,
8 instruction regarding diabetes, insulin, sliding scale insulin orders,
9 and proper injection procedures.

10 NEW SECTION. Sec. 13. A new section is added to chapter 74.09 RCW
11 to read as follows:

12 Within funds appropriated for this purpose, the department shall
13 establish two dental access projects to serve seniors and other adults
14 who are categorically needy blind or disabled. The projects shall
15 provide:

16 (1) Enhanced reimbursement rates for certified dentists for
17 specific procedures, to begin no sooner than July 1, 2009;

18 (2) Reimbursement for trained medical providers for preventive oral
19 health services, to begin no sooner than July 1, 2009;

20 (3) Training, development, and implementation through a partnership
21 with the University of Washington school of dentistry;

22 (4) Local program coordination including outreach and case
23 management; and

24 (5) An evaluation that measures the change in utilization rates and
25 cost savings.

26 NEW SECTION. Sec. 14. If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. Sec. 15. If specific funding for the purposes of
31 sections 4, 6, 7, 8, and 9 of this act, referencing the section by
32 section number and by bill or chapter number, is not provided by June
33 30, 2008, in the omnibus appropriations act, each section not

1 referenced is null and void.

Passed by the House March 10, 2008.

Passed by the Senate March 7, 2008.

Approved by the Governor March 25, 2008, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 25, 2008.

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

"I am returning, without my approval as to Sections 6 and 9, Engrossed Second Substitute House Bill 2668 entitled:

"AN ACT Relating to long-term care."

This bill includes the policy recommendations from the Governor's Long-Term Care Task Force designed to meet increased demands for long-term care that supports autonomy and self-determination in people's homes and in community settings rather than institutions.

Sections 6 and 9 were not funded by the legislature in the budget, and are therefore null and void pursuant to Section 15 of this bill. For these reasons, I have vetoed Sections 6 and 9 of Engrossed Second Substitute House Bill 2668.

With the exception of Sections 6 and 9, Engrossed Second Substitute House Bill 2668 is approved."