

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5708

Chapter 366, Laws of 2011

62nd Legislature
2011 Regular Session

LONG-TERM CARE SERVICES

EFFECTIVE DATE: 07/22/11

Passed by the Senate April 21, 2011
YEAS 47 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 11, 2011
YEAS 96 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 16, 2011, 2:58 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5708** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 17, 2011

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5708

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senator Keiser)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to reshaping the delivery of long-term care
2 services; amending RCW 18.20.020, 18.20.030, and 18.52.030; reenacting
3 and amending RCW 70.127.040; adding a new section to chapter 18.20 RCW;
4 adding a new section to chapter 74.42 RCW; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** The legislature has a long history of
7 supporting seniors where they live whether it is at home or in a
8 licensed care facility. It is widely recognized that the consumer of
9 senior services and long-term care of tomorrow will have different
10 demands and expectations for the type and manner of supportive and
11 health care services that they receive. Cost efficiencies must and can
12 be achieved within the health care system. Through the use of care
13 coaches, technology-supported health and wellness programs, and by
14 allowing greater flexibility for the specialization and use of nursing
15 facility beds, costly hospitalizations and rehospitalizations can be
16 reduced and the entry to licensed care settings can be delayed.

17 **Sec. 2.** RCW 18.20.020 and 2006 c 242 s 1 are each amended to read
18 as follows:

1 As used in this chapter:

2 (1) "Boarding home" means any home or other institution, however
3 named, which is advertised, announced, or maintained for the express or
4 implied purpose of providing housing, basic services, and assuming
5 general responsibility for the safety and well-being of the residents,
6 and may also provide domiciliary care, consistent with chapter 142,
7 Laws of 2004, to seven or more residents after July 1, 2000. However,
8 a boarding home that is licensed for three to six residents prior to or
9 on July 1, 2000, may maintain its boarding home license as long as it
10 is continually licensed as a boarding home. "Boarding home" shall not
11 include facilities certified as group training homes pursuant to RCW
12 71A.22.040, nor any home, institution or section thereof which is
13 otherwise licensed and regulated under the provisions of state law
14 providing specifically for the licensing and regulation of such home,
15 institution or section thereof. Nor shall it include any independent
16 senior housing, independent living units in continuing care retirement
17 communities, or other similar living situations including those
18 subsidized by the department of housing and urban development.

19 (2) "Basic services" means housekeeping services, meals, nutritious
20 snacks, laundry, and activities.

21 (3) "Person" means any individual, firm, partnership, corporation,
22 company, association, or joint stock association, and the legal
23 successor thereof.

24 (4) "Secretary" means the secretary of social and health services.

25 (5) "Department" means the state department of social and health
26 services.

27 (6) "Resident's representative" means a person designated
28 voluntarily by a competent resident, in writing, to act in the
29 resident's behalf concerning the care and services provided by the
30 boarding home and to receive information from the boarding home, if
31 there is no legal representative. The resident's competence shall be
32 determined using the criteria in RCW 11.88.010(1)(e). The resident's
33 representative may not be affiliated with the licensee, boarding home,
34 or management company, unless the affiliated person is a family member
35 of the resident. The resident's representative shall not have
36 authority to act on behalf of the resident once the resident is no
37 longer competent.

1 (7) "Domiciliary care" means: Assistance with activities of daily
2 living provided by the boarding home either directly or indirectly; or
3 health support services, if provided directly or indirectly by the
4 boarding home; or intermittent nursing services, if provided directly
5 or indirectly by the boarding home.

6 (8) "General responsibility for the safety and well-being of the
7 resident" means the provision of the following: Prescribed general low
8 sodium diets; prescribed general diabetic diets; prescribed mechanical
9 soft foods; emergency assistance; monitoring of the resident; arranging
10 health care appointments with outside health care providers and
11 reminding residents of such appointments as necessary; coordinating
12 health care services with outside health care providers consistent with
13 RCW 18.20.380; assisting the resident to obtain and maintain glasses,
14 hearing aids, dentures, canes, crutches, walkers, wheelchairs, and
15 assistive communication devices; observation of the resident for
16 changes in overall functioning; blood pressure checks as scheduled;
17 responding appropriately when there are observable or reported changes
18 in the resident's physical, mental, or emotional functioning; or
19 medication assistance as permitted under RCW 69.41.085 and as defined
20 in RCW 69.41.010.

21 (9) "Legal representative" means a person or persons identified in
22 RCW 7.70.065 who may act on behalf of the resident pursuant to the
23 scope of their legal authority. The legal representative shall not be
24 affiliated with the licensee, boarding home, or management company,
25 unless the affiliated person is a family member of the resident.

26 (10) "Nonresident individual" means a person who resides in
27 independent senior housing, independent living units in continuing care
28 retirement communities, or in other similar living environments or in
29 an unlicensed room located within a boarding home ((and may receive)).
30 Nothing in this chapter prohibits nonresidents from receiving one or
31 more of the services listed in RCW 18.20.030(5) or requires licensure
32 as a boarding home when one or more of the services listed in RCW
33 18.20.030(5) are provided to nonresidents. A nonresident individual
34 may not receive domiciliary care, as defined in this chapter, directly
35 or indirectly by the boarding home and may not receive the items and
36 services listed in subsection (8) of this section, except during the
37 time the person is receiving adult day services as defined in this
38 section.

1 (11) "Resident" means an individual who is not related by blood or
2 marriage to the operator of the boarding home, and by reason of age or
3 disability, chooses to reside in the boarding home and receives basic
4 services and one or more of the services listed under general
5 responsibility for the safety and well-being of the resident and may
6 receive domiciliary care or respite care provided directly or
7 indirectly by the boarding home and shall be permitted to receive
8 hospice care through an outside service provider when arranged by the
9 resident or the resident's legal representative under RCW 18.20.380.

10 (12) "Resident applicant" means an individual who is seeking
11 admission to a licensed boarding home and who has completed and signed
12 an application for admission, or such application for admission has
13 been completed and signed in their behalf by their legal representative
14 if any, and if not, then the designated representative if any.

15 (13) "Adult day services" means care and services provided to a
16 nonresident individual by the boarding home on the boarding home
17 premises, for a period of time not to exceed ten continuous hours, and
18 does not involve an overnight stay.

19 **Sec. 3.** RCW 18.20.030 and 2004 c 142 s 17 are each amended to read
20 as follows:

21 (1) After January 1, 1958, no person shall operate or maintain a
22 boarding home as defined in this chapter within this state without a
23 license under this chapter.

24 (2) A boarding home license is not required for the housing, or
25 services, that are customarily provided under landlord tenant
26 agreements governed by the residential landlord-tenant act, chapter
27 59.18 RCW, or when housing nonresident individuals who(~~(7) without~~
28 ~~ongoing assistance from the boarding home, initiate and arrange for~~
29 ~~services provided by persons other than~~) chose to participate in
30 programs or services under subsection (5) of this section, when offered
31 by the boarding home licensee or the licensee's contractor. This
32 subsection does not prohibit the licensee from furnishing written
33 information concerning available community resources to the nonresident
34 individual or the individual's family members or legal representatives.
35 The licensee may not require the use of any particular service
36 provider.

1 (3) Residents receiving domiciliary care, directly or indirectly by
2 the boarding home, are not considered nonresident individuals for the
3 purposes of this section.

4 (4) A boarding home license is required when any person other than
5 an outside service provider, under RCW 18.20.380, or family member:

6 (a) Assumes general responsibility for the safety and well-being of
7 a resident;

8 (b) Provides assistance with activities of daily living, either
9 directly or indirectly;

10 (c) Provides health support services, either directly or
11 indirectly; or

12 (d) Provides intermittent nursing services, either directly or
13 indirectly.

14 (5) A boarding home license is not required for one or more of the
15 following services that may, upon the request of the nonresident, be
16 provided to a nonresident individual: (a) Emergency assistance
17 provided on an intermittent or nonroutine basis (~~to any nonresident~~
18 ~~individual~~); (b) systems, including technology-based monitoring
19 devices, employed by independent senior housing, or independent living
20 units in continuing care retirement communities, to respond to the
21 potential need for emergency services (~~for nonresident individuals~~);
22 (c) (~~infrequent, voluntary, and~~) scheduled and nonscheduled blood
23 pressure checks (~~for nonresident individuals~~); (d) (~~nurse referral~~)
24 nursing assessment services (~~provided at the request of a nonresident~~
25 ~~individual~~) to determine whether referral to an outside health care
26 provider is recommended; (e) making and reminding the nonresident of
27 health care appointments (~~at the request of nonresident individuals~~);
28 (f) preadmission assessment (~~at the request of the nonresident~~
29 ~~individual~~) for the purposes of transitioning to a licensed care
30 setting; (~~or~~) (g) medication assistance which may include reminding
31 or coaching the nonresident, opening the nonresident's medication
32 container, using an enabler, and handing prefilled insulin syringes to
33 the nonresident; (h) falls risk assessment; (i) nutrition management
34 and education services; (j) dental services; (k) wellness programs; (l)
35 prefilling insulin syringes when performed by a nurse licensed under
36 chapter 18.79 RCW; or (m) services customarily provided under landlord
37 tenant agreements governed by the residential landlord-tenant act,

1 chapter 59.18 RCW. (~~The preceding services may not include continual~~
2 ~~care or supervision of a nonresident individual without a boarding home~~
3 ~~license.~~)

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 18.20 RCW
5 to read as follows:

6 (1) A boarding home must provide each nonresident a disclosure
7 statement upon admission and at the time that additional services are
8 requested by a nonresident.

9 (2) The disclosure statement shall notify the nonresident that:

10 (a) The resident rights of chapter 70.129 RCW do not apply to
11 nonresidents;

12 (b) Licensing requirements for boarding homes under this chapter do
13 not apply to nonresident units; and

14 (c) The jurisdiction of the long-term care ombudsman does not apply
15 to nonresidents and nonresident units.

16 **Sec. 5.** RCW 18.52.030 and 2000 c 93 s 6 are each amended to read
17 as follows:

18 Nursing homes operating within this state shall be under the
19 active, overall administrative charge and supervision of an on-site
20 full-time administrator licensed as provided in this chapter. No
21 person acting in any capacity, unless the holder of a nursing home
22 administrator's license issued under this chapter, shall be charged
23 with the overall responsibility to make decisions or direct actions
24 involved in managing the internal operation of a nursing home, except
25 as specifically delegated in writing by the administrator to identify
26 a responsible person to act on the administrator's behalf when the
27 administrator is absent. The administrator shall review the decisions
28 upon the administrator's return and amend the decisions if necessary.
29 The board shall define by rule the parameters for on-site full-time
30 administrators in nursing homes with small resident populations
31 (~~and~~), nursing homes in rural areas, nursing homes with small
32 resident populations when the nursing home has converted some of its
33 licensed nursing facility bed capacity for use as assisted living or
34 enhanced assisted living services under chapter 74.39A RCW, or
35 separately licensed facilities collocated on the same campus.

1 **Sec. 6.** RCW 70.127.040 and 2003 c 275 s 3 and 2003 c 140 s 8 are
2 each reenacted and amended to read as follows:

3 The following are not subject to regulation for the purposes of
4 this chapter:

5 (1) A family member providing home health, hospice, or home care
6 services;

7 (2) A person who provides only meal services in an individual's
8 permanent or temporary residence;

9 (3) An individual providing home care through a direct agreement
10 with a recipient of care in an individual's permanent or temporary
11 residence;

12 (4) A person furnishing or delivering home medical supplies or
13 equipment that does not involve the provision of services beyond those
14 necessary to deliver, set up, and monitor the proper functioning of the
15 equipment and educate the user on its proper use;

16 (5) A person who provides services through a contract with a
17 licensed agency;

18 (6) An employee or volunteer of a licensed agency who provides
19 services only as an employee or volunteer;

20 (7) Facilities and institutions, including but not limited to
21 nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41
22 RCW, adult family homes under chapter 70.128 RCW, boarding homes under
23 chapter 18.20 RCW, developmental disability residential programs under
24 chapter 71A.12 RCW, other entities licensed under chapter 71.12 RCW, or
25 other licensed facilities and institutions, only when providing
26 services to persons residing within the facility or institution;

27 (8) Local and combined city-county health departments providing
28 services under chapters 70.05 and 70.08 RCW;

29 (9) An individual providing care to ill individuals, (~~((disabled))~~)
30 individuals with disabilities, or vulnerable individuals through a
31 contract with the department of social and health services;

32 (10) Nursing homes, hospitals, or other institutions, agencies,
33 organizations, or persons that contract with licensed home health,
34 hospice, or home care agencies for the delivery of services;

35 (11) In-home assessments of an ill individual, (~~((disabled))~~) an
36 individual with a disability, or a vulnerable individual that does not
37 result in regular ongoing care at home;

1 (12) Services conducted by and for the adherents of a church or
2 religious denomination that rely upon spiritual means alone through
3 prayer for healing in accordance with the tenets and practices of such
4 church or religious denomination and the bona fide religious beliefs
5 genuinely held by such adherents;

6 (13) A medicare-approved dialysis center operating a medicare-
7 approved home dialysis program;

8 (14) A person providing case management services. For the purposes
9 of this subsection, "case management" means the assessment,
10 coordination, authorization, planning, training, and monitoring of home
11 health, hospice, and home care, and does not include the direct
12 provision of care to an individual;

13 (15) Pharmacies licensed under RCW 18.64.043 that deliver
14 prescription drugs and durable medical equipment that does not involve
15 the use of professional services beyond those authorized to be
16 performed by licensed pharmacists pursuant to chapter 18.64 RCW and
17 those necessary to set up and monitor the proper functioning of the
18 equipment and educate the person on its proper use;

19 (16) A volunteer hospice complying with the requirements of RCW
20 70.127.050; (~~and~~)

21 (17) A person who provides home care services without compensation;
22 and

23 (18) Nursing homes that provide telephone or web-based transitional
24 care management services.

25 NEW SECTION. Sec. 7. A new section is added to chapter 74.42 RCW
26 to read as follows:

27 (1) Nursing facilities may provide telephone or web-based
28 transitional care management services to persons discharged from the
29 facility to home for up to thirty days postdischarge.

30 (2) When a nursing facility provides transitional care management
31 services, the facility must coordinate postdischarge care and service
32 needs with in-home agencies licensed under chapter 70.127 RCW, and
33 other authorized care providers, to promote evidence-based transition
34 care planning. In-home service agencies and other authorized care
35 providers, including the department, shall, when appropriate, determine
36 resident eligibility for postdischarge care and services and coordinate
37 with nursing facilities to plan a safe transition of the client to the

1 home setting. When a resident is discharged to home and is without in-
2 home care or services due to the resident's refusal of care or their
3 ineligibility for care, the nursing facility may provide telephone or
4 web-based transitional care management services. These services may
5 include care coordination services, review of the discharge plan,
6 instructions to promote compliance with the discharge plan, reminders
7 or assistance with scheduling follow-up appointments with other health
8 care professionals consistent with the discharge plan, and promotion of
9 self-management of the client's health condition. Web-based transition
10 care services may include patient education and the provision of
11 services described in this section. They are not intended to include
12 telehealth monitoring.

13 (3) If the nursing facility identifies concerns in client care that
14 result from telephone or web-based transitional care management
15 services, the nursing facility will notify the client's primary care
16 physician. The nursing facility will also discuss with the client
17 options for care or other services which may include in-home services
18 provided by agencies licensed under chapter 70.127 RCW.

19 NEW SECTION. **Sec. 8.** The department of social and health services
20 shall convene a work group of stakeholders to discuss and identify one
21 or more mechanisms to incentivize nursing facilities to close or to
22 eliminate licensed beds from active service. The department shall
23 adopt rules to implement the recommendations of the work group. By
24 September 1, 2011, the department shall report to the governor and the
25 legislature on the recommendations of the work group and the status of
26 the department's rule-making efforts and any statutory impediments to
27 the implementation of any of the recommendations.

28 NEW SECTION. **Sec. 9.** If any part of this act is found to be in
29 conflict with federal requirements that are a prescribed condition to
30 the allocation of federal funds to the state, the conflicting part of
31 this act is inoperative solely to the extent of the conflict and with
32 respect to the agencies directly affected, and this finding does not
33 affect the operation of the remainder of this act in its application to
34 the agencies concerned. Rules adopted under this act must meet federal

1 requirements that are a necessary condition to the receipt of federal
2 funds by the state.

Passed by the Senate April 21, 2011.

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