

SENATE BILL REPORT

SB 5337

As Reported by Senate Committee On:
Health & Long-Term Care, February 13, 2025
Ways & Means, February 28, 2025

Title: An act relating to improving dementia care in Washington by creating a certification for memory care services.

Brief Description: Creating a certification for memory care services.

Sponsors: Senators Orwall, Frame, Hasegawa, Lovick and Nobles.

Brief History:

Committee Activity: Health & Long-Term Care: 1/28/25, 2/13/25 [DPS-WM].
Ways & Means: 2/18/25, 2/28/25 [DP2S].

Brief Summary of Second Substitute Bill

- Establishes a memory care certification beginning July 1, 2026, and prohibits anyone from operating or maintaining a memory care facility or memory care unit within the state without a certification after that date.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5337 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Orwall, Vice Chair; Muzzall, Ranking Member; Bateman, Chapman, Christian, Harris, Holy, Riccelli, Robinson and Slatter.

Staff: Julie Tran (786-7283)

SENATE COMMITTEE ON WAYS & MEANS

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

Majority Report: That Second Substitute Senate Bill No. 5337 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Robinson, Chair; Stanford, Vice Chair, Operating; Trudeau, Vice Chair, Capital; Frame, Vice Chair, Finance; Gildon, Ranking Member, Operating; Torres, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Dozier, Assistant Ranking Member, Capital; Boehnke, Braun, Cleveland, Conway, Dhingra, Hansen, Hasegawa, Kauffman, Muzzall, Pedersen, Riccelli, Saldaña, Wagoner, Warnick, Wellman and Wilson, C..

Staff: Maria Hovde (786-7474)

Background: Assisted Living Facility. Assisted living facilities (ALFs) are a type of long-term care (LTC) facility that provide housing and basic services to seven or more residents. Each ALF provides a range of services which may include housekeeping, meals, laundry, activities, assistance with activities of daily living, health support services, and intermittent nursing services

Department of Social and Health Services. The Department of Social and Health Services (DSHS) oversees licensing and regulatory compliance for LTC facilities in Washington State and is authorized to take enforcement actions against a facility for noncompliance.

Specialized Dementia Care Program. The DSHS Specialized Dementia Care Program is for a person with dementia who can no longer live at home and need Medicaid funding to help pay for LTC services in a facility.

Through DSHS, for a person with dementia, this program offers a package of specialized dementia care services while living at an ALF. DSHS contracts with ALFs throughout the state to provide the specialized dementia care services package, which include:

- care, supervision, and activities tailored to the specific needs, interests, abilities, and preferences of the person;
- coordination with the person's family to ensure the person's routines and preferences are honored;
- dementia-specific training for staff;
- awake staff 24 hours a day;
- a safe outdoor environment with walking paths and access to a secure outdoor area; and
- intermittent nursing services, help with medications, personal care, and other support services.

To be eligible for this program, a person with dementia must meet all three of the following requirement. The person must be:

- diagnosed with Alzheimer's disease or another irreversible dementia such as vascular dementia, Lewy body dementia, Pick's disease, or Creutzfeldt-Jakob disease;
- receiving or eligible for Medicaid; and

- assessed by a DSHS assigned case manager and found to have the need for specialized dementia care.

Dementia. Dementia is an overall term describing a decline in mental ability that interferes with daily life and affects memory, thinking, and behavior. There are many types of dementia and each form of dementia has a different cause. Alzheimer's disease is the most common type of dementia and accounts for between 60 percent to 80 percent of cases. Other common types include: vascular dementia, Lewy body dementia, frontotemporal dementia, and mixed dementia.

In 2023, according to the Alzheimer's Disease Facts and Figures Report, an estimated 6.7 million older adults have and are living with Alzheimer's disease in the United States and without the development of medical breakthroughs to prevent, slow, or cure Alzheimer's disease, that number is projected to double to nearly 14 million adults by 2060.

Summary of Bill (Second Substitute): After July 1, 2026, a person may not operate or maintain a memory care facility or memory care unit within this state without a certification for memory care services.

Memory Care Certification. An ALF must apply to become certified; pay any fees, including the initial certification and the annual certification fees; and provide any definition required by DSHS to demonstrate the facility meets the certification requirements. To be certified as a memory care facility or memory care unit, a licensed ALF must meet the following requirements:

- have a valid and current ALF license;
- not have a pattern of any of the following uncorrected or recurring significant enforcement actions prior to the date of application that includes: citations issued in areas related to resident harm or serious risk of harm, or actions or inactions resulting in serious disregard for resident health, safety, or deterioration of quality of care and civil fines based on DSHS' determination of moderate or serious severity;
- not have a stop placement, or any conditions on a license related to resident care or any license revocation or summary suspension actions prior to the application date;
- have permanent infrastructure that considers the specialized needs of residents with dementia including elements intended to prevent elopement;
- have a staffing plan that provides staff levels in the memory care unit that is adequate to respond to the assessed sleeping and waking patterns and needs of residents, including awake staff 24 hours per day at a level that is adequate to respond to the residents' needs. It includes: if residents are in separate buildings or cottages, at least one awake staff must be physically present in each building or cottage and maintaining staffing levels adequate to routinely provide assistance with eating, drinking, and cueing of eating and drinking, and other necessary physical assistance with eating for residents who require feeding assistance;
- provide a physical building structure that has access sufficient to meet programming and daily activities; and

- have developed policies and procedures to: plan for and respond to memory care residents who may wander; outline actions to be taken when a memory care resident is missing; and outline how consultative resources for residents will be obtained when needed for addressing resident behavioral challenges, outline how the professionals who will provide the consultation, and specify when and how the consultation will be utilized.

To maintain a memory care certification, a licensed ALF must comply with the certification requirements and also:

- complete a full assessment of each resident receiving specialized care in the memory care facility or memory care unit on a semiannual basis, at minimum, that considers the needs of residents with dementia;
- ensure each long-term care worker working directly with memory care residents have at least six hours of continuing education per year related to dementia;
- ensure staff who work directly with memory care residents are familiar with the ALF's comprehensive disaster preparedness plan;
- provide daily activity programming that are consistent with the individual residents' functional abilities, interests, habits, and preferences;
- have an outdoor area for residents that meets additional specifications;
- ensure that areas used by residents have a residential atmosphere and residents have opportunities for privacy, socialization, and safe walking and wandering behaviors.

For an ALF with a memory care certification, there must be provisions specific to the needs of residents receiving certified memory care services with dementia in the facility's comprehensive disaster preparedness plan. A certified memory care provider is required, on a daily basis with exception during the activation of the disaster preparedness plan, to:

- provide residents access to: opportunities for independent, self-directed activities; individual activities that a staff person or volunteer engages the resident in a planned or spontaneous activity of interest; and group activities;
- offer opportunities for activities accommodating variations in a resident's mood, energy, and preferences; and
- make available common areas that could be shared with other ALF residents, at least one of which is outdoors and can accommodate and offer opportunities for individual or group activity.

A certified memory care provider is required to have an outdoor area for residents that:

- is accessible to residents without staff assistance;
- is surrounded by walls or fences tall enough to prevent typical elopement behaviors;
- has areas protected from direct sunlight and rain throughout the day;
- has firm, stable, and slip-resistant walking surfaces, which are free from abrupt changes and suitable for individuals using wheelchairs and walkers;
- has suitable outdoor furniture;
- has non-poisonous and non-toxic plants;
- has areas for appropriate outdoor activities that are of interest to residents; and

- is monitored or access can be restricted during extreme weather events to ensure the residents' health and well-being is not adversely impacted by their time outside.

Other Requirements for Certified Memory Care Providers. If any part of an ALF has restricted egress that prevents residents with cognitive impairment from leaving the facility without accompaniment by staff or another individual, it is sufficient to be considered as a memory care facility or memory care unit.

Any ALF with a certified memory care facility or memory care unit that goes through an ownership change must submit a certification application as a memory care facility at the same time that the ALF is applying for an ALF license through an ownership change proceeding.

An ALF must develop and maintain a comprehensive disaster preparedness plan to be followed in the event of a disaster or emergency including extreme heat and extreme cold. A certified memory care provider must have comprehensive disaster preparedness plans that specifically consider the needs of residents with dementia.

A certified memory care provider is not required to provide or maintain feeding tubes or intravenous nutrition

A certified memory care provider must make appropriate activities available based upon the resident's individual schedule and interests, such as providing access to staff support, food, and appropriate activities to residents who are awake at night.

A certified memory care provider must ensure residents have access to their own rooms at all times without staff assistance.

For certified memory care providers, an additional disclosure form must be provided that includes a description of the memory care facility or memory care unit's staffing coverage. This information must include the number of awake staff available overnight and the regular direct care staffing level per bed in the memory care facility or memory care unit. Residents of the certified memory care facility or memory care unit and their resident representatives, when relevant, shall be informed of any significant changes in scope of services or staffing within 30 days of the change.

Noncompliance Violations. DSHS may take action if an ALF is found to have continued: using terminology such as memory care facility or dementia care facility without having been issued a memory care certification; or operating a facility or unit within a facility that has restricted egress without having been issued a memory care certification.

Actions DSHS may take for a noncompliance violation include but are not limited to:

- imposing civil penalties of up to \$10,000 for a current or former licensed provider who is operating an uncertified memory care facility, or uncertified memory care

- unit;
- suspend, revoke, or refuse to renew a memory care certification; or
- suspend admissions by imposing a stop placement to the memory care facility or memory care unit.

Department of Social and Health Services Duties and Responsibilities. DSHS, during the course of its regular licensing inspection activities, must review whether a certified memory care provider continues to comply with the certification requirements.

DSHS must maintain a register of ALFs that are certified as memory care facilities or memory care units and that register must be available to the public and consumers. DSHS must provide a current certification document to the certified memory care provider. The registration document must be posted in a public area for residents, their families, and visitors to view upon entering the main entrance of the memory care facility or memory care unit.

DSHS may allow conditional exemptions to the certified memory care facilities or units for locations operating in buildings constructed or originally licensed prior to July 1, 2025, where the residents reside and an alternate viewing area was created in the memory care unit, as long as the viewing area:

- is not obstructed by indoor furniture, storage areas, cleaning equipment, trash receptacles, snack food or drink tables, or other such encumbrances that would minimize access to the viewing area;
- does not serve as a hallway or an additionally required community space such as a dining area or activity room;
- does not house mobile health care services, such as home health, podiatrist, and dental services, or other purposes;
- is a community space not within the residents' room; and
- has windows that have an unobstructed and viewable height accessible by wheelchair.

Enforcement and Rulemaking Authority. The Legislature finds that operating a memory care facility or memory care unit within the state without becoming certified are matters vitally affecting the public interest for the purposes of applying the Consumer Protection Act and a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition.

DSHS has rulemaking authority to:

- implement the memory care certification;
- address how currently operating memory care facilities or memory care units applying for certification must operate during the certification application process. These rules may include where the department may, at its sole discretion, grant conditional exemptions on a case-by-case basis for facilities operating before July 1, 2026, to prevent disruption of services or displacement of residents; and
- define significant change in scope of services or staffing for a certified memory care

facility or memory care unit and provide an example of an accepted disclosure form to the facilities and units for their use.

Definitions. A "memory care facility" or "memory care unit" means any ALF which markets, or otherwise represents, itself as providing memory care or specialized dementia care services, whether as a facility dedicated solely to serving residents with dementia within a dedicated unit or wing within a larger facility. An ALF does not need to specifically use the terms memory care facility, specialized dementia care, or similar terms in its or name to be considered a memory care facility.

“Memory care services” and “specialized dementia care services” means services offered and provided in addition to the ALF's domiciliary care services that are responsive to an individual with dementia’s typical needs.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

Memory Care Certification.

- Specifies the fees that an assisted living facility applying for memory care certification must pay includes both the initial and annual certification fees.

Enforcement and Rulemaking Authority.

- Removes bill language stating that the Attorney General, under the Consumer Protection Act, may enforce the statutes under the RCW Assisted Living Facilities chapter.

EFFECT OF CHANGES MADE BY HEALTH & LONG-TERM CARE COMMITTEE (First Substitute):

Memory Care Certification Requirements.

- Changes the certification requirements to ensure that the requirements apply to all licensed assisted living facilities (ALFs) becoming certified as a memory care facility or memory care unit including facilities with a DSHS-contract for dementia care services.
- Changes the requirement for a qualifying facility to not have a pattern of certain uncorrected or recurring significant enforcement actions prior to the application date rather than not having any uncorrected significant enforcement actions in the 12 months prior to the application date.
- Changes the requirement for a qualifying facility to not have a pattern of uncorrected or recurring significant enforcement actions such as citations issued in areas related to resident harm or serious risk of harm, or actions or inactions resulting in serious disregard for resident health, safety, or deterioration of quality of care rather than citations issued in areas adversely affecting resident care.
- Requires that any qualifying facility must not have any license revocation or

- summary suspension actions prior to the application date rather than any license revocation or summary suspension actions.
- Changes the certification requirement for a qualifying facility to have permanent infrastructure that considers specialized needs of residents with dementia including elements intended to prevent elopement rather than having permanent building structure that provides a separate wing, unit, or building for memory care where residents will reside and that meets the residents with dementia need, including elements intended to prevent elopement such as restricted egress.
 - Requires a qualifying facility to have a staffing plan that provides staff levels in the memory care unit that is adequate to respond to the assessed sleeping and waking patterns and needs of residents and includes if residents are in separate buildings or cottages, at least one awake staff must be physically present in each building or cottage rather than maintain staffing levels in memory care portions of the ALF that are appropriate to meet the unique needs of residents with dementia.

Certified Memory Care Facilities or Units' Responsibilities and Duties.

- Clarifies that to maintain certification, a certified memory care facility or unit must comply with the certification plans and requirements.
- Clarifies that certified memory care facilities or units must complete a full assessment of each resident receiving specialized care in the facility or unit that considers the residents with dementia's needs rather than including a generalized dementia care assessment.
- Specifies that the continuing education requirement are for long-term care workers, not staff members, who works directly with memory care residents.
- Removes the list of possible appropriate topics that a staff member who works directly with memory care residents can take to meet the continuing education requirements.
- Clarifies that an ALF with a memory care certification must include provisions specific to the needs of residents receiving certified memory care services with dementia in the facility's comprehensive disaster preparedness plan.

Certified Memory Care Facilities or Units' Outdoor Area Requirements.

- Permits DSHS to allow conditional exemptions to the certified memory care facilities or units for locations operating in buildings constructed or originally licensed prior to July 1, 2025, where the residents reside and an alternate viewing area was created in the memory care unit, as long as the viewing area meets certain requirements.
- Requires a certified memory care facility or unit to make available common areas that could be shared with other ALF residents and at least one of which is outdoors rather than allowing one of the multiple common areas be outdoors when possible.
- Requires the outdoor area for residents in a certified memory care facility or unit to be surrounded by walls or fences tall enough to prevent typical elopement behaviors and removes the requirement that the walls or fences be at least 72 inches high.
- Allows that during extreme weather events, a certified memory care facility or unit may restrict access to the outdoor area.

Staffing Coverage Disclosure Form.

- Clarifies that the staffing coverage disclosure form provided by the certified memory care facility or unit is an additional disclosure form.
- Removes the requirement that certified memory care facility or units must provide any notices of decrease in scope of services.
- Requires that certified memory care facility or unit residents or their resident representative, when relevant, must be informed of any significant changes in scope of services or staffing within 30 days of the change.
- Allows DSHS to have rulemaking authority to define a significant change in scope of services or staffing for a certified memory care facilities or units as it relates to an additional disclosure form that facilities or units must provide.

Additional Changes.

- Clarifies that the operation of a memory care facility without the certification may be enforced by the Attorney General under the Consumer Protection Act.
- Specifies that the rules adopted by DSHS may include, at DSHS' discretion, granting conditional exemptions on a case-by-case basis for facilities operating before July 1, 2026 to prevent service disruption or the displacement of residents.
- Amends the definition of "memory care services" and "specialized dementia care services" to exclude services provided to residents within a facility with restricted egress dedicated solely to serving residents with dementia or within a dedicated unit or wing with restricted egress within a larger facility.
- Requires any ALF with a certified memory care facility or unit, rather than any ALF, going through an ownership change must submit a memory care facility certification application at the same time the facility applies for an ALF license.
- Requires DSHS to provide a current certification, not a registration, document to the memory care facility or unit.
- Specifies that if any part of an ALF has restricted egress that prevents residents with cognitive impairment from leaving the facility without accompaniment by staff or another individual, not just restricted egress, it is sufficient to be considered as a memory care facility or memory unit requiring certification.
- Provides that an ALF can be considered a memory care facility even if it does not use the terms "memory care facility," "specialized dementia care," or similar terms in its name, not advertising and name.
- Makes technical corrections and corrects internal references.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Health & Long-Term Care):

The committee recommended a different version of the bill than what was heard. PRO: There are many ALFs in the state that call themselves memory care and can be very costly for people. This bill provides an opportunity for the state to lead and create a consistent definition for memory care across all facilities to help the staff, care providers, individuals, and their families. This bill is also for DSHS oversight and gives multiple layers of protection for the clients and their families. It gives families peace of mind that their loved ones are receiving the highest quality of care possible in the state's memory care units.

OTHER: Developing a new provider certification takes careful work to ensure that problems are identified and resolved. There are continued discussions on the bill. There are concerns about the bill that include the initial certification process, the conflict with certain regulations, and the disclosure requirements. It's important to carefully craft a definition for memory care.

Persons Testifying (Health & Long-Term Care): PRO: Senator Tina Orwall, Prime Sponsor; Teresa Matthews; Brad Forbes, Alzheimer's Association; Joanna Grist, AARP; Melanie Smith, WA State Long Term Care Ombuds Program.

OTHER: Carma Matti-Jackson, Washington Health Care Association (WHCA); Alyssa Odegaard, LeadingAge Washington.

Persons Signed In To Testify But Not Testifying (Health & Long-Term Care): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means):

The committee recommended a different version of the bill than what was heard. PRO: This will be a monumental improvement for families. This is overdue accountability and transparency for the delivery of memory care services and incorporates safety measures. This can be implemented smoothly because this is based on existing contracts. This bill is about serving the most vulnerable individuals with dementia. There is no standard definition of memory care in statute and the services offered by memory care units vary widely. This bill standardizes the definition of memory care and allows DSHS to provide oversight of these facilities and gives the attorney general the ability to enforce these contracts under the Consumer Protection Act. Being fee supported, this is a cost effective way to ensure we protect some of the most vulnerable in the state.

Persons Testifying (Ways & Means): PRO: Brad Forbes, Alzheimer's Association; Melanie Smith, WA State Long Term Care Ombuds Program.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.