
OLR Bill Analysis

sHB 5313 (as amended by House "A")*

AN ACT CONCERNING REGISTRATION OF TEMPORARY NURSING SERVICES AGENCIES AND MAXIMUM RATES FOR TEMPORARY NURSING SERVICES AT NURSING HOME FACILITIES.

SUMMARY

This bill makes various unrelated changes affecting long-term care facilities and services. Principally, it:

1. repeals current statutes on nursing pools and replaces them with provisions for “temporary nursing services agencies” with the same requirements (§§ 1-8 & 15);
2. requires the Department of Public Health (DPH) commissioner, by October 1, 2022, to establish an annual registration system for these agencies and authorizes her to charge an annual registration fee of up to \$750 (§ 1);
3. requires the Department of Social Services (DSS) commissioner to evaluate rates these agencies charge nursing homes and report her recommendations to the Aging, Human Services, and Public Health committees by October 1, 2023 (§ 4);
4. requires nursing homes and residential care homes (RCHs) to electronically report each involuntary discharge or transfer to the Long-Term Care Ombudsman and on a website she maintains (§§ 9 & 10);
5. requires the Long-Term Care ombudsman to convene a working group to study specified issues involving managed residential communities (MRCs) that are not affiliated with continuing care retirement communities (§ 11);
6. generally requires mandated elder abuse reporters to complete the DSS elder abuse training program, or another DSS-approved

program, by December 31, 2022, or within 90 days after becoming a mandated elder abuse reporter (§§ 12 & 13); and

7. requires DSS to (a) develop an advisory for Medicaid long-term care and home care applicants on their right to seek legal assistance, (b) post the advisory on its website by July 1, 2022, and (c) include the advisory in its applications by September 1, 2023 (§ 14).

*House Amendment "A" replaces the original bill (File 132). It primarily (1) allows, rather than requires, DPH to adopt regulations on temporary nursing services agencies; (2) eliminates the requirement that DSS set maximum rates for these agencies, instead requiring the department to study rates these agencies charge nursing homes; and (3) adds provisions on electronic reporting of nursing home and RCH involuntary transfers, the MRC working group, mandated elder abuse reporter training, and an advisory for Medicaid applicants on their legal rights.

EFFECTIVE DATE: Upon passage, except that provisions on (1) temporary nursing services agencies and (2) electronically reporting nursing home involuntary transfers and discharges take effect July 1, 2022.

§§ 1-8 & 15 — TEMPORARY NURSING SERVICES AGENCIES

The bill repeals current statutes on nursing pools and replaces them with provisions for "temporary nursing services agencies" with the same requirements. Under the bill, these agencies provide temporary nursing services to nursing homes, residential care homes, and hospitals on a per diem or temporary basis.

It requires the DPH commissioner, by October 1, 2022, to establish an annual registration system for these agencies and authorizes her to charge an annual registration fee of up to \$750. Starting by January 1, 2023, it prohibits temporary nursing services agencies from providing services in the state unless they obtain DPH registration.

The bill also makes related technical and conforming changes,

replacing references to nursing pools with temporary nursing services agencies in various statutes (§§ 5-8).

Definitions (§ 1)

“Nursing personnel” means advanced practice registered nurses, licensed practical nurses and registered nurses (including those issued temporary permits), and nurse’s aides.

A “temporary nursing services agency” is any person, firm, corporation, limited liability company, partnership, or association that is hired to provide temporary nursing services to health care facilities. It excludes individuals who offer only their own temporary nursing services.

Agency Requirements (§ 1)

The bill requires the DPH commissioner to establish requirements for temporary nursing services agencies, including minimum qualifications for nursing personnel the agencies provide to health care facilities.

Annual Cost Reports (§ 1)

Starting July 1, 2023, the bill requires temporary nursing services agencies to submit to the DPH commissioner annual cost reports in a manner the commissioner prescribes, in consultation with the DSS commissioner.

Under the bill, the cost reports must include the (1) agency’s itemized revenues and costs; (2) average number of nursing personnel the agency employs; (3) average fees the agencies charge by type of nursing personnel and health care facility; (4) nursing personnel’s state of permanent residence, aggregated by the type of nursing personnel; and (5) any other information the DPH commissioner requires.

The bill also requires agencies to make available to DPH, upon request, records, books, reports, and other data related to their operation. Records that agencies provide are not subject to disclosure under the Freedom of Information Act.

Regulations (§ 1)

The bill permits the DPH commissioner to adopt regulations to implement the bill's requirements. She may also adopt implementing policies and procedures while in the process of adopting the regulations, so long as she posts her intent to adopt regulations in the eRegulations System within 20 days after adopting the policies and procedures.

Written Agreements (§ 2)

As under current law for nursing pools, the bill requires temporary nursing services agencies to enter into a written agreement with a health care facility that ensures that the assigned nursing personnel have appropriate credentials. The agreement must be on file at both the agency and facility within 14 days after the nursing personnel's assignment.

The bill subjects health care facilities who fail to do so to DPH disciplinary action (e.g., probation, letter of reprimand, or license suspension), as under current law for nursing pools.

The bill exempts from the written agreement requirement a health care facility, or its subsidiary, that supplies temporary nursing services only to its own facility without charge.

Appeals (§ 3)

As under current law for nursing pools, the bill permits a person aggrieved by a temporary nursing services agency to petition the Superior Court for the judicial district where the agency's services were provided. The aggrieved person may seek relief, including temporary and permanent injunctions, or bring a civil action for damages.

Civil Penalties (§ 3)

As under current law for nursing pools, the bill authorizes the court to assess a civil penalty of up to \$300 per violation against a temporary nursing services agency that violates the bill's provisions. It specifies that each violation is a separate and distinct offense, and in the case of a continuing violation, each day it continues is a separate and distinct offense.

It also allows the DPH commissioner to request the attorney general

to bring a civil action in the Hartford Superior Court for injunctive relief to restrain any further violation. The Superior Court must grant the relief after a notice and hearing.

Agency Rates (§4)

The bill requires the DSS commissioner, in consultation with the DPH commissioner, to evaluate temporary nursing services agency rates charged to nursing homes to determine whether changes are needed in regulating these rates to ensure nursing homes have adequate personnel.

Under the bill, the DSS commissioner must report to the Aging, Human Services, and Public Health committees by October 1, 2023, on her recommendations, which must be based on agency cost reports submitted to DPH (see § 1). The report may include (1) any changes needed in regulating agency rates and (2) how best to ensure, within available appropriations, that nursing homes are able to maintain adequate nursing personnel during a declared public health emergency.

§§ 9 & 10 — ELECTRONIC REPORTING OF INVOLUNTARY TRANSFERS OR DISCHARGES IN NURSING HOMES AND RCHS

The bill requires nursing homes and RCHs to electronically report each involuntary discharge or transfer (1) to the Long-Term Care Ombudsman, in a manner she prescribes, and (2) on a website the ombudsman maintains in accordance with federal HIPAA privacy protections.

Under the bill, RCHs must begin reporting this information within six months after the bill's passage. (In practice, nursing homes already do this.)

By law, a nursing home or RCH may involuntarily transfer or discharge a resident only if the (1) facility cannot provide the resident adequate care, (2) resident's health has improved to the point that he or she no longer needs the home's services, (3) health or safety of individuals in the facility are endangered, (4) resident failed to pay for care after reasonable notice, or (5) facility closes. Residents and their representatives must be notified in writing of the discharge at least 30

days in advance (CGS §§19a-535 and 535a). Federal law also requires nursing homes to give the Long-Term Care Ombudsman a copy of the notice (42 CFR §483.15 (c)(3)(i)).

§ 11 — WORKING GROUP ON MANAGED RESIDENTIAL COMMUNITIES

The bill requires the Long-Term Care Ombudsman to appoint and convene a working group of up to eight members to study certain issues involving MRCs that are not affiliated with a facility providing services to continuing care retirement communities. Specifically, the working group must study (1) what notice MRCs should provide residents about rent and other fee increases that exceed certain percentages and (2) resident health transitions and determinations of care levels.

Membership

Under the bill, working group members must at least include:

1. the Long-Term Care Ombudsman, or her designee, and
2. representatives of the Connecticut Assisted Living Association, Connecticut Association of Health Care Facilities/Connecticut Center for Assisted Living, and LeadingAge Connecticut (provided these members are willing and able to serve).

The working group chairpersons are (1) the Long-Term Care Ombudsman, or her designee, and (2) another chairperson selected by the working group from among its members.

Meetings and Staff

The bill requires the Long-Term Care Ombudsman to schedule the working group's first meeting within 60 days of the bill's passage. The Aging Committee's administrative staff also serve in this capacity for the working group.

Report

The bill requires the working group to submit its findings and recommendations to the Aging Committee by December 31, 2022. The working group terminates on this date, or when it submits its report,

whichever is later.

§§ 12 & 13 — ELDER ABUSE REPORTER TRAINING

The bill generally requires mandated elder abuse reporters to complete the DSS elder abuse training program, or another DSS-approved program, by December 31, 2022, or within 90 days after becoming a mandated elder abuse reporter (see BACKGROUND). The requirement does not apply to any reporter who has already received the training from an entity that must provide the training to its employees. By law, any institution, organization, agency, or facility that employs people to care for seniors age 60 and older must (1) provide mandatory training on detecting potential elder abuse and (2) inform employees of their obligation to report such incidences.

By law, the DSS commissioner must develop a training program on identifying and reporting elder abuse, neglect, exploitation, and abandonment and make the program available on the department's website and in-person or otherwise throughout the state.

§ 14 — ADVISORY FOR MEDICAID APPLICANTS

The bill requires DSS to develop an advisory for Medicaid long-term care and home care applicants on their right to seek legal assistance. At a minimum, it must state that while applicants are not required to use an attorney, obtaining legal advice before completing their application may help protect their finances and rights.

Under the bill, DSS must post the advisory on its website by July 1, 2022, and include the advisory in its applications by September 1, 2023.

BACKGROUND

Mandatory Elder Abuse Reporters

Existing law requires doctors, nurses, long-term care (LTC) facility administrators and staff, other health care personnel, and certain other professionals to report suspected abuse, neglect, abandonment, or exploitation of the elderly and LTC facility residents to DSS within 72 hours of suspecting the abuse or face penalties. They must also report to the department if they suspect an elderly person needs protective

services (CGS §§ 17a-412 & 17b-451).

Related Bills

HB 5195 (File 101), favorably reported by the Aging Committee, contains the same provisions requiring nursing homes to report involuntary transfers and discharges to the Long-Term Care Ombudsman.

HB 5196 (File 102), favorably reported by the Aging Committee, contains the same provisions requiring RCHs to report involuntary transfers and discharges to the Long-Term Care Ombudsman.

sHB 5314 (File 117), favorably reported by the Aging Committee, contains the same provisions requiring mandated elder abuse reporters to complete the DSS elder abuse training program, or another DSS-approved program, by December 31, 2022, or within 90 days after becoming a mandated elder abuse reporter.

COMMITTEE ACTION

Aging Committee

Joint Favorable Substitute

Yea 9 Nay 6 (03/10/2022)

Public Health Committee

Joint Favorable

Yea 31 Nay 0 (04/13/2022)