
OLR Bill Analysis

HB 5046

AN ACT PROMOTING NURSING HOME RESIDENT QUALITY OF LIFE.

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Requires each entity seeking a nursing facility management certificate to disclose additional information in its application, revises the criteria upon which DPH can base its certificate issuance decisions, and expands the penalties and grounds upon which DPH can impose disciplinary action against these certificate holders

SUMMARY

This bill makes changes related to the management and oversight of long-term care and similar licensed facilities. For example, it:

1. prohibits nursing homes from placing residents in a room containing more than two beds, for newly admitted residents starting July 1, 2025, and for all residents one year after that (§ 1);
2. requires the design of a Center of Excellence Program for nursing homes (§ 2);
3. requires the establishment of an online nursing home consumer report card, within available appropriations (§ 3);
4. phases out the license category of rest homes with nursing supervision (§ 5);
5. authorizes the Department of Public Health (DPH) to impose disciplinary action on licensed health care institutions that fail to

comply with a plan of correction accepted by the department (§ 7); and

6. explicitly authorizes the Department of Social Services (DSS) to conduct forensic audits and makes facilities liable for the cost of forensic audits (§ 11).

The bill also makes various minor, technical, and conforming changes.

EFFECTIVE DATE: Upon passage, unless otherwise specified below.

§ 1 — NURSING HOME ROOM CAPACITY LIMITATIONS

Prohibits each licensed chronic and convalescent nursing home and rest home with nursing supervision from placing residents in a room containing more than two beds

The bill prohibits each licensed chronic and convalescent nursing home and rest home with nursing supervision (nursing home) from placing newly admitted residents in a room containing more than two beds beginning on July 1, 2025. It also prohibits any resident room at a nursing home from containing more than two beds beginning on July 1, 2026.

A violation is a Class B violation and may result in a civil penalty of up to \$10,000. A new violation occurs each day that a nursing home fails to comply with this section and an additional penalty may be assessed.

§ 2 — NURSING HOME CENTER OF EXCELLENCE PROGRAM

Requires the public health commissioner to design a Center of Excellence Program for licensed nursing homes to provide incentive for those that meet certain criteria

The bill requires the DPH commissioner to design a Center of Excellence Program to provide incentives for qualifying nursing homes. A “Center of Excellence” is a nursing home that serves residents in a manner consistent with evidence-based best practices for person-centered care.

While designing the program, the commissioner must study (1) how much a Center of Excellence Program could improve the quality of care at nursing homes, and (2) what other states with similar programs consider to be best practices for nursing homes.

The commissioner is also required to consult:

1. nursing home owners and operators,
2. hospitals,
3. nursing home residents and their advocates,
4. the Office of the Long-Term Care Ombudsman,
5. the DSS commissioner or her designee,
6. the Office of Policy and Management (OPM) secretary or his designee, and
7. other relevant stakeholders as the DPH commissioner considers necessary.

The program's design must at least do the following:

1. identify evidence-based qualitative and quantitative standards for care delivery that a nursing home must meet to be designated as a Center of Excellence, and the measures that must be met for each standard;
2. identify a pathway for nursing homes to achieve this designation (by applying, an inspection, or other means), and create a way to designate them;
3. determine potential incentives for nursing homes that meet these standards; and
4. identify ways to maximize the use of available federal funding to support the program.

The program is voluntary, and nursing homes will not be penalized if they do not participate.

The commissioner can engage with a consultant, within available appropriations, to identify best practices and design the program.

Upon completing the program’s design or no later than January 1, 2026, the commissioner is required to report to the OPM secretary on the plan developed.

The DSS commissioner is authorized to seek an amendment to the state Medicaid plan, or a waiver from federal law, to provide incentives for the program participants. The commissioner must develop incentives that do not duplicate other federal or state funding.

EFFECTIVE DATE: July 1, 2024

§ 3 — ONLINE NURSING HOME CONSUMER REPORT CARD

Requires DPH to establish an online nursing home consumer report card, within available appropriations

The bill requires DPH, in consultation with the Office of the Long-Term Care Ombudsman and the Long-Term Care Advisory Council, to establish an online nursing home consumer report card, within available appropriations, that includes:

1. comprehensive information on the quality of care for people in need of nursing home care and their families, and
2. industry leading practices.

DPH is required to include a link to the report in a prominent place on the department’s website.

EFFECTIVE DATE: July 1, 2024

§ 4 — NURSING HOME WAITING LIST AND TRANSFERS

Requires nursing homes, without regard for the waiting list, to admit transferring residents from a nursing home that is closing; generally exempts from this requirement homes with no more than 30% self-pay patients if the transferring patient is indigent

Under existing law and subject to certain exceptions, nursing homes receiving state funds for providing care for the indigent must admit applicants on a first-come, first-served basis and cannot discriminate against indigent applicants based on their source of payment.

Under one existing exception, a nursing home with 30% or fewer self-pay residents is not required to admit an indigent person on a waiting

list when a bed becomes available in the following six months, provided that a bed cannot be held open for more than 30 days. A home taking advantage of this waiver must notify DSS and the regional long-term care ombudsman on a quarterly basis. The bill specifically requires the home to notify these entities on the date the exemption began, and quarterly thereafter.

Under current law, nursing homes are authorized to admit transferring residents from a nursing home that was closing without regard for the waiting list. The bill makes this mandatory, with one exception (see below). This specifically applies to applicants wishing to transfer from a nursing home (1) that is closing or (2) in which they were placed after the nursing home where they previously resided closed (or for homes in receivership, was anticipated to close).

Under the bill, nursing homes that qualify for the waiting list exemption described above (i.e., homes with no more than 30% self-pay patients) are not required to admit indigent persons who are transferring under these provisions except when they are being transferred from a nursing home that is closing due to an emergency.

EFFECTIVE DATE: July 1, 2024

§ 5 — DISCONTINUATION OF REST HOME WITH NURSING SUPERVISION LICENSES

Prohibits the DPH commissioner from granting new rest home with nursing supervision licenses

The bill prohibits the DPH commissioner from granting new licenses to establish or operate a rest home with nursing supervision. A rest home with nursing supervision is a residential facility that provides intermediate care services to residents. (In practice, nursing homes generally have been phasing out these beds or converting them to chronic and convalescent nursing home beds.)

The DPH commissioner is authorized to approve a one-time license renewal for a duration of one year or less if the applicant follows the existing criteria for renewal. Applicants seeking a one-year license renewal are prohibited from appealing a decision to deny the renewal.

§ 6 — NURSING FACILITIES AND STATE ENFORCEMENT AUTHORITY

Extends certain existing procedures and penalties for nursing home violations of federal law to violations of state laws or regulations

Under the bill, if a Medicaid-participating nursing facility is found to be noncompliant with applicable state statutes or regulations during a DPH survey, it is treated the same as being noncompliant with specified federal law under existing procedures.

Under this law, among other things:

1. if DPH finds that this noncompliance poses an imminently serious threat to patient well-being, it must state the charges and request a summary order from DSS, which (if issued) must include termination of Medicaid participation or appointment of a temporary manager and may include other penalties (e.g., having patients transferred to other facilities or civil penalties);
2. if DPH finds that this noncompliance does not pose an immediate threat, it must state the charges and request that DSS impose any of a range of similar remedies as for imminently serious charges (but none are mandatory); and
3. the facility may request a hearing with DSS within 10 days of the statement of charges or summary order.

Other existing laws, under specified procedures, authorize DPH to impose a range of sanctions on nursing homes that violate applicable state laws or regulations.

§ 7 — PENALTIES FOR HEALTHCARE INSTITUTIONS FAILING TO COMPLY WITH CORRECTIVE ACTION PLANS

Subjects DPH-licensed healthcare institutions to potential disciplinary action for failing to comply with an accepted plan of corrective action

By law, a DPH-licensed health care institution (such as a hospital or nursing home) must submit a correction plan to DPH if the department, after an inspection, issues a notice that the institution was out of compliance with applicable state laws or regulations. DPH may impose disciplinary action on these institutions if they fail to submit a plan of

correction meeting the law's requirements.

The bill additionally authorizes DPH to impose disciplinary action on these institutions if they fail to comply with a plan of correction accepted by the department. These actions may only be imposed after a hearing and may include, among other things:

1. revocation or suspension of a license;
2. censure of a licensee;
3. placement of a licensee on probationary status, and the requirement to report regularly to the department on the matters which are the basis of the probation;
4. restricting the acquisition of other facilities for a period set by the commissioner; or
5. issuing an order compelling compliance with applicable laws or regulations of the department.

§§ 8 & 9 — MANAGED RESIDENTIAL COMMUNITY RESIDENCY AGREEMENTS AND FEES

Requires MRCs to (1) include information in written residency agreements on the way they may adjust monthly or other recurring fees; (2) give residents, or their representatives, 90 days' notice of any fee increases; and (3) give residents prorated or full refunds of certain fees if the facility cannot meet the resident's needs within the first 45 days of occupancy

Existing law requires managed residential communities (MRC) to give each resident a written residency agreement that clearly sets forth the resident's and the MRC's rights and responsibilities. The bill modifies the contents of the agreement and establishes notification and reimbursement requirements for certain resident fees.

EFFECTIVE DATE: July 1, 2024, except the provisions on the residency agreements are effective upon passage.

Written Residency Agreement

The bill adds to the required contents of the agreement the way in which MRCs may adjust monthly or other recurring fees, including (1)

how often fees may increase, (2) the schedule or specific dates of these increases, and (3) the history of fee increases over the past three calendar years.

Under current law, written residency agreements must include, among other things, a full and fair disclosure of all charges, fees, expenses, and costs to be borne by the resident. The bill specifies that this includes nonrefundable charges, fees, expenses, and costs.

The bill's provisions apply to written residency agreements entered into on and after July 1, 2024.

Fee Notifications and Reimbursements

The bill requires MRCs to give residents, or their representatives, 90 days' advance notice of any increase in monthly or recurring fees and written disclosure of any nonrefundable charges.

It also requires MRCs to give residents prorated or full reimbursements of certain charges if the MRC determines it can no longer meet the resident's needs during the first 45 days of the resident's occupancy (e.g., prorated first month's rent, prorated community fee, full last month's rent, and full security deposit).

Background — Related Bill

sHB 5001, §§ 23 & 24, favorably reported by the Aging Committee, modifies the contents of MRC residency agreements and related notification and reimbursement requirements in a similar manner, on and after October 1, 2024, instead of July 1, 2024.

§ 10 — ALSA FEES

Requires ALSAs to (1) disclose fee increases to residents or their representatives at least 60 days before they take effect and (2) upon request, give them the history of fee increases over the past three years

Existing law requires an assisted living services agency (ALSA) to ensure all services provided individually to clients are fully understood by the client or the client's representative, and that the client or representative is made aware of their cost.

The bill also requires an ALSA to (1) disclose fee increases to the client

or representative at least 60 days before they take effect and (2) upon request, give the resident or representative the history of fee increases over the past three calendar years.

The bill specifies that this requirement does not limit an ALSA from immediately adjusting fees if (1) they are directly related to a change in the level of care or services necessary to meet the resident's safety needs at the time of a scheduled resident care meeting or (2) the resident's condition changes, resulting in a required change in services.

EFFECTIVE DATE: July 1, 2024

Background — Related Bill

sHB 5001, § 25, favorably reported by the Aging Committee, requires ALSAs to disclose fee increases to residents or their representatives at least 90 days before they take effect and, upon request, to give them the history of fee increases over the past three years, effective October 1, 2024.

§ 11 — FORENSIC AUDITS OF LONG-TERM CARE FACILITIES

Requires long-term care facilities potentially experiencing serious financial losses to be liable for the costs of any forensic audit by DSS, and subjects them to civil penalties for failure to cooperate

Existing law sets procedures and requirements related to DSS audits of long-term care facilities that receive Medicaid or other state payments (including chronic and convalescent nursing homes, chronic disease hospitals associated with them, rest homes with nursing supervision, residential care homes, and certain residential facilities for persons with intellectual disabilities).

The bill explicitly extends these provisions to forensic audits. A “forensic audit” is an examination of financial records for information or evidence which may be used in legal proceedings.

The bill also requires facilities identified by DSS as potentially experiencing a serious financial loss to be liable for the costs of a forensic audit (such as reports or subsequent testimony) if DSS requires them to undergo one. It requires the facilities to fully cooperate with forensic

audits and to ensure that their personnel, financial consultants, and accountants also cooperate as necessary. If a facility does not comply with DSS's written request to cooperate, the facility is subject to a maximum civil penalty of \$3,250 per day until it cooperates. Facilities are permitted to appeal any civil penalties under this section in accordance with DSS's administrative appeals process.

The bill authorizes DSS to recover the costs of conducting a forensic audit, or these civil penalties, through deducting the amount from Medicaid payments due to be made to the facility.

§§ 12 & 13 — APPOINTMENT OF RECEIVERS OF NURSING HOMES OR RESIDENTIAL CARE HOMES

Requires nursing home or residential care home receiver applications be granted if the facility sustains any type of serious financial loss or failure and updates the criteria for who may be appointed as a receiver of these facilities

By law, DSS or DPH, or in some cases a facility resident or a resident's representative, may apply to Superior Court seeking the appointment of a receiver for a nursing home or residential care home under certain circumstances. The bill requires the court to grant the application for a receiver if the facility experiences a serious financial loss or failure. Under current law, this applies only if that financial loss or failure jeopardizes the health, safety, and well-being of patients. Generally, a receiver is a neutral party the court appoints to operate the facility until conditions improve or, in some cases, the facility is ready to be closed.

The bill removes the requirement for a receiver to be a licensed nursing home facility administrator or have experience as a residential care home administrator or something similar, as applicable. It requires candidates to have substantial experience in the delivery of high-quality health care services and management of long-term care facilities; current law does not specifically reference the quality of services. The bill also requires candidates to have a level of education or licensure that is customarily commensurate with people who manage facilities like the one under receivership.

The bill also removes the requirement for DSS to adopt regulations on receiver qualifications.

§ 14 — NURSING FACILITY MANAGEMENT SERVICES

Requires each entity seeking a nursing facility management certificate to disclose additional information in its application, revises the criteria upon which DPH can base its certificate issuance decisions, and expands the penalties and grounds upon which DPH can impose disciplinary action against these certificate holders

The bill requires nursing facility management services certificate applicants who have beneficial owners to include the names of all persons who have a 5% or greater ownership interest in the applying entity and a description of their relationship to the applicant. Under current law, the threshold to disclose a beneficial owner is 10%.

Under existing law, people listed on the application must sign an affidavit disclosing certain information about their criminal history, civil cases, or health care business-related disciplinary actions.

The bill requires applicants to also disclose:

1. the location and description of any nursing facility (in any state) to which a beneficial owner provides, or has provided within the last five years, management services, and
2. if a beneficial owner or applicant owns, operates, or administers a nursing facility, or has within the last five years.

Additionally, the bill requires applicants to disclose if any such nursing facility associated with the applicant or beneficial owner has been subject to any of the following:

1. three or more civil penalties imposed through DPH final orders or by other states within the last two years;
2. Medicare or Medicaid sanctions in any state, other than civil penalties of \$20,000 or less; and
3. nonrenewal or termination of a Medicare or Medicaid provider agreement.

Providing Nursing Facility Management Services to Facilities not Listed on the Original Certificate

The bill requires nursing facility management certificate holders to

request the approval of DPH to provide management services to a facility not listed on their certificate at least 30 days before doing so. The department has the discretion to approve the request subject to conditions or deny the request based on the certificate holder's compliance history with state and federal regulatory requirements at the facilities it manages.

Adjudication of Applications

The bill requires DPH to base its decision to renew or issue a certificate on information otherwise available to DPH, in addition to the information submitted to DPH by the applicant and the managed facilities' compliance status as under current law.

The bill expands the conditions under which DPH may deny a nursing facility management certificate. Current law allows DPH to do so based on the substantial failure to comply with the Public Health Code. The bill instead allows DPH to deny issuing a certificate if the applicant or a beneficial owner has an evidentially demonstrable unacceptable history of compliance with (1) state licensure requirements; (2) federal requirements; and (3) state regulatory requirements for each licensed health care facility owned, operated, or managed by the applicant or beneficial owner in the United States in the five years before the application.

The bill states that an unacceptable history of compliance can be evidenced by:

1. licensed health care facilities being subject to the adverse actions described above that must be listed on the application (e.g., three or more civil penalties);
2. licensed health care facilities having continuing violations, or a pattern of violations, of state licensure standards or federal certification standards; or
3. the criminal conviction or guilty pleas by an applicant or beneficial owner to charges of fraud, patient or resident abuse or neglect, or a crime of violence or moral turpitude.

Under existing law, unchanged by the bill, DPH can also deny an application based on the facility's failure to provide required information.

The bill requires renewal applicants to submit satisfactory evidence that any nursing facilities that the applicant provides management services to is in substantial compliance with federal regulatory requirements. As under existing law, the applicant must also submit evidence that they are in substantial compliance with existing state law, the Public Health Code, and licensing regulations, in addition to any other information DPH requires. The bill also specifies that the applicant must show a history of past compliance.

Disciplinary Action for Failing to Comply With State and Federal Requirements

Existing law authorizes DPH to impose disciplinary action (e.g., suspension or revocation of the certificate) on a nursing facility management services certificate holder for substantial failure to comply with statutory requirements. The bill specifically authorizes DPH to also impose discipline on them if, at any of the facilities they manage, there is a substantial failure to comply with state licensure requirements, state regulatory requirements, or federal requirements.

The bill also authorizes DPH, after a hearing, to impose a civil penalty on a nursing home facility management certificate holder of \$20,000 or less if three or more facilities managed by the certificate holder are subject to civil penalties imposed by DPH during a 12-month period.

Under existing law, DPH may require a certificate holder and the nursing facility licensee to submit a plan of corrective action to DPH when the commissioner finds there has been a substantial failure to comply with requirements applicable to nursing home facility management certificate holders. Under the bill, a plan of correction accepted by DPH is an order of the department, and violations of these orders can result in disciplinary action against the certificate holder. Disciplinary actions can include, among other things, the suspension or revocation of the certificate.

COMMITTEE ACTION

Aging Committee

Joint Favorable

Yea 15 Nay 0 (03/12/2024)