
OLR Bill Analysis

sHB 5046 (as amended by House "A")

AN ACT PROMOTING NURSING HOME RESIDENT QUALITY OF LIFE.

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Establishes a working group to study the impact of prohibiting nursing homes from placing newly admitted residents in rooms with no more than two beds

BACKGROUND

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 newly admitted residents in a room with more than two beds, starting July 1, 2026 (§ 1);
2. phases out the license category of rest homes with nursing supervision (§ 3);
3. 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 (§ 6); and
4. generally requires managed residential communities to give residents information on how the communities may adjust monthly fees and 90 days' notice of fee increases (§§ 7 & 8).

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

*House Amendment "A" replaces the underlying bill and makes several changes to it, such as (1) delaying by one year a provision prohibiting nursing homes from placing new residents in rooms with more than two beds, (2) authorizing the Department of Social Services (DSS) commissioner to recalculate nursing home Medicaid rates starting in fiscal year 26 to reflect any licensed bed reductions associated with the elimination of three and four bed rooms, (3) adding an exemption from DSS certificate of need requirements for rest homes with nursing supervision that are changing their license to a chronic and convalescent nursing home, (4) adding certain exemptions to the underlying disclosure requirements for managed residential communities, (5) adding a prohibition on employees of private equity companies from serving as a receiver of a nursing home facility or residential care home, (6) removing provisions from the underlying bill on forensic audits of certain facilities, and (7) establishing a working group to study the impact of prohibiting nursing homes from placing new residents in rooms with more than two beds.

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 newly admitted residents in a room with more than two beds starting on July 1, 2026; correspondingly allows DSS to recalculate Medicaid rates to reflect any associated bed reductions

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 with 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. Nursing homes may only incur one violation per newly admitted resident in one calendar year.

The bill allows the DSS commissioner to recalculate a nursing home's

Medicaid rate for fiscal year (FY) 26 and following FYs, reflecting any bed reductions associated with the elimination of three and four bed rooms. The bill requires fair rent to reflect the costs for building modifications or additions incurred in FY 25, and following FYs, associated with the elimination of three and four bed rooms.

§ 2 — NURSING HOME WAITING LIST AND TRANSFERS

Generally requires nursing homes, without regard for the waiting list, to admit transferring residents from a nursing home that is closing, subject to certain exemptions, such as (1) homes with no more than 30% self-pay patients if the transferring patient is indigent or (2) when the applicant has been denied Medicaid eligibility and has no payor source

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 next six months, as long as 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 after that.

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 generally makes this mandatory, with certain exceptions (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), or nursing homes with vacancies in private rooms, are not required to admit indigent people who are transferring under these

provisions except when they are being transferred from a nursing home that is closing due to an emergency.

Under the bill, nursing homes are also not required to disregard the waiting list when admitting people from other homes that are closing if the nursing home has determined that the applicant (1) does not have a payor source because they have been denied Medicaid eligibility, (2) has not paid a nursing home that is closing for the three months prior to the date of the application for admittance and does not have an application for Medicaid pending, (3) is subject to a Medicaid penalty period, or (4) does not require nursing home level of care according to applicable state and federal law.

EFFECTIVE DATE: July 1, 2024

§§ 3 & 4 — DISCONTINUATION OF REST HOME WITH NURSING SUPERVISION LICENSES

Prohibits the DPH commissioner from granting new rest home with nursing supervision licenses; exempts these homes from DSS certificate of need requirements when changing their licensure to a chronic and convalescent nursing home

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.

By law, long-term care facilities generally must seek certificate of need (CON) approval from DSS before various activities. The bill exempts rest homes with nursing supervision, when changing their licensure to a chronic and convalescent nursing home, from needing CON approval from DSS.

§ 5 — 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 remedies similar to those 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.

§ 6 — 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 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 that 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.

§§ 7 & 8 — MANAGED RESIDENTIAL COMMUNITY RESIDENCY AGREEMENTS AND FEES

Generally requires MRCs to (1) include information in written residency agreements on how they may adjust monthly or other recurring fees; (2) give residents or their representatives 90 days' notice of any fee increases; (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; exempts from these and certain related requirements elderly housing complexes participating in certain federal and state programs

Existing law requires managed residential communities (MRC) to give each resident a written residency agreement that clearly sets out 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: October 1, 2024, except the provisions on the residency agreements (§ 7) are effective upon passage.

Written Residency Agreement

The bill generally adds to the required contents of the agreement the

way that 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.

These provisions apply to written residency agreements entered into on and after October 1, 2024.

The bill exempts from these requirements, as well existing requirements that agreements include a payment schedule and disclosure of all late fees or potential penalties, MRCs that are (1) an elderly housing complex receiving assistance and funding through the U.S. Department of Housing and Urban Development's (HUD) Assisted Living Conversion Program (ALCP) or (2) a DSS demonstration project to provide subsidized assisted living services.

Fee Notifications and Reimbursement

The bill generally 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 generally requires MRCs to give residents prorated or full reimbursement of certain charges if it 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).

But the bill exempts from these requirements MRCs that are (1) an elderly housing complex receiving assistance and funding through the HUD ALCP or (2) a DSS demonstration project to provide subsidized assisted living services.

§ 9 — 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: October 1, 2024

§§ 10 & 11 — APPOINTMENT OF RECEIVERS OF NURSING HOMES OR RESIDENTIAL CARE HOMES

Requires nursing home or residential care home receiver applications to 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

Under existing law, courts are required to grant an application for the appointment of a receiver for a nursing home facility or residential care home (facility) if they find, among other things, the facility has sustained a serious financial loss or failure that jeopardizes the health, safety, and welfare of the patients. The bill eliminates the requirement that the serious financial loss or failure jeopardize the health, safety, and welfare of the patients, in order to require the court to grant the receiver application.

The bill specifically allows entities to serve as a receiver of a facility in addition to individuals. It requires receiver candidates to either be a (1) licensed nursing home facility administrator or have experience as a residential care home administrator or (2) have substantial experience

in the delivery of high-quality health care services and management of long-term care facilities, and have a level of education or licensure that is customarily commensurate with people who manage facilities like the one under receivership.

Under current law, a receiver candidate must be a person that either (1) is a licensed nursing home facility administrator, in order to serve as a receiver of a nursing home facility, or (2) has experience as a residential care home administrator, or similar experience, in order to be a receiver of a residential care home. Current law does not specifically reference the quality of services.

The bill prohibits persons employed by a private equity company or entity owned or controlled by a private equity company from being appointed to act as a receiver of a nursing home facility or residential care home.

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

§ 12 — 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 name of everyone with 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; or
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.

§ 13 — WORKING GROUP

Establishes a working group to study the impact of prohibiting nursing homes from placing newly admitted residents in rooms with no more than two beds

The bill establishes a working group to study the impact of prohibiting licensed chronic and convalescent nursing homes and rest homes with nursing supervision (nursing homes) from placing newly admitted residents in rooms with more than two beds without consent of the resident. The working group must examine methods to (1) assist facilities affected, including identifying opportunities to support their financial sustainability, and (2) ensure that these facilities are able to comply.

The working group consists of:

1. one member appointed each by the six top legislative leaders;
2. the Office of Policy and Management secretary or his designee;

3. the DSS commissioner or her designee;
4. the DPH commissioner or her designee; and
5. the Aging Committee chairpersons and ranking members.

The bill allows any member of the working group appointed by the legislative leaders to be a member of the General Assembly.

The bill requires all initial appointments to the working group be made no later than 30 days after the bill's passage.

The House chairperson and ranking member of the Aging Committee are required to be the working group chairpersons. They must schedule its first meeting to be held not later than 60 days after the bill's passage.

The bill requires the Aging Committee administrative staff to serve in that role for the working group.

The bill requires the working group to submit a report of its findings and recommendations to the Aging Committee no later than January 1, 2026. The working group ends on the date it submits the report, or January 1, 2026, whichever is later.

BACKGROUND

Legislative History

The House referred the bill (File 146) to the Appropriations Committee, which reported out a substitute that eliminated provisions requiring DPH to establish a nursing home center of excellence program and an online nursing home consumer report card.

COMMITTEE ACTION

Aging Committee

Joint Favorable
Yea 15 Nay 0 (03/12/2024)

Judiciary Committee

Joint Favorable

Yea 24 Nay 11 (04/05/2024)

Appropriations Committee

Joint Favorable Substitute

Yea 52 Nay 0 (04/15/2024)