

HB 186 -- Protection of the Elderly

Co-Sponsors: Jolly, Willoughby, Abel, Johnson (90), Sager, LeVota, Curls, Carnahan, Burnett, Wilson (42), Zweifel, Harris (23), Muckler, Green, Donnelly, Yaeger, Bishop, Haywood, Henke, Walker, Meiners, Jones, Hampton, Campbell, Spreng, Fraser, Ransdall, Schoemehl, Wildberger, Dougherty, Bland, Selby, Villa, Lowe, Davis (122), McKenna, Barnitz, Seigfreid, Shoemyer (9), Young, Liese, Riback Wilson (25), Ward

This bill modifies the law relating to protection of the elderly. In its major provisions, the bill:

- (1) Creates a new chapter on protection of the elderly and transfers several existing statutory sections to this chapter;
- (2) Expands the list of persons required to report suspected elder abuse to the Department of Health and Senior Services and mandates that suspected abuse be reported within 24 hours;
- (3) Requires reports of suspected elder abuse to be referred to the appropriate law enforcement agency. Current law requires only substantiated reports to be referred. The department is also required to investigate immediately any report of elder abuse or neglect that involves a threat of imminent harm;
- (4) Requires the department and law enforcement agencies to cross-train personnel in investigating cases of suspected elder abuse;
- (5) Allows statements by adults 60 years of age or older or with a disability that are related to an offense, crime, or misconduct to be admitted into evidence under certain conditions;
- (6) Requires that persons or institutions who make reports or cooperate with the department in investigations and who have not committed elder abuse be immune from civil or criminal liability unless they have done so negligently, recklessly, in bad faith, or with malicious purpose;
- (7) Requires emergency medical services and hospital employees who abuse, neglect, or financially exploit the elderly to be placed on the employee disqualification list;
- (8) Allows the department to require the production of documentation and other information for use in investigations and inspections under penalty of refusal, suspension, or revocation of a license or contract;
- (9) Requires the departments of Health and Senior Services,

Mental Health, and Social Services to cooperate in abuse and neglect investigations;

(10) Extends the moratorium on issuing certificates of need for long-term care beds until July 1, 2007, and extends the no minimum expenditure provisions for facilities that can apply for certificates of need until January 1, 2007;

(11) Requires the department to consider in issuing or renewing a license the compliance history of the operator of a home health agency, the compliance history of any agency in which the operator or owner has had a financial interest, and any home health agency responses to survey findings in the official review made by the department. Any application must include a sworn affidavit attesting to the agency's substantial compliance with all state and federal laws and regulations;

(12) Requires the department to consider in issuing or renewing a license the compliance history of the operator of a long-term care facility (LTCF), the compliance history of any LTCF in which the operator or owner has had a financial interest, and any facility responses to survey findings in the official review made by the department;

(13) Requires the department to require LTCFs to submit information on staffing and retention and to post this information publicly on its web site;

(14) Requires all residential care facilities I, residential care facilities II, intermediate care facilities, and skilled nursing facilities to post their most recent inspection report conspicuously in their facilities;

(15) Permits the disclosure of confidential personal records without court order only to specific state agencies in order to perform their constitutional and statutory duties or to the resident or the resident's guardian or conservator;

(16) Prohibits insurance carriers from considering unsubstantiated inspection reports and reports of investigations of complaints for underwriting purposes;

(17) Allows the department to revoke a nursing home license for any reason for which they may deny an application for licensure;

(18) Increases the civil penalties for violation of state laws and regulations for nursing homes and stresses that these penalties are to be imposed in cases where there have been multiple violations regardless of any subsequent correction of the violations by a facility;

(19) Requires nursing homes and hospitals receiving transfers from nursing homes to notify the local coroner immediately upon the death of any resident and notify the department within one business day of the death;

(20) Protects residents and their families from retaliation from nursing homes if they have made reports of violations that they have reasonable cause to believe have occurred;

(21) Allows the department to decrease the frequency of inspections of licensed facilities from twice a year to once a year based on the facility's compliance record;

(22) Requires salaries for physical, occupational, speech, and inhalation therapy to be included in the patient care expenditure component of the nursing facility Medicaid per diem rate;

(23) Prohibits persons from claiming any privilege as a defense for failing to report suspected elder abuse except for those afforded to attorneys and members of the clergy;

(24) Permits the department access to all financial and medical records related directly to investigations of alleged misconduct;

(25) Requires all Medicaid participation agreements with in-home service provider agencies to include a requirement for abuse and neglect training and training in dealing with Alzheimer's patients when applicable;

(26) Allows the department to seek injunction for interference with an investigation or inspection;

(27) Requires the department to provide specific written notice to in-home service provider agencies in cases where contracts are denied, placed on probation, or terminated. The provider will have 30 days to file a complaint requesting a hearing before the Administrative Hearing Commission, where the burden of proof will be on the provider; and

(28) Allows the department to issue letters of censure or warning without notice.