



WASHINGTON STATE LEGISLATURE

December 29, 2015

Dear Secretary of the Senate and Chief Clerk of the House of Representatives,

As the co-chairs of the Joint Legislative Executive Committee on Aging and Disability, we are pleased to notify you that the Committee has completed its addendum report for the 2015 interim. Enclosed, please find the addendum report, submitted pursuant to chapter 4, section 206(10), Laws 2015 3rd sp. sess. (uncodified).

We look forward to continuing the Committee's discussions during the 2016 interim.

Sincerely,

Senator Barbara Baily
10th Legislative District

Representative Steve Tharinger
24th Legislative District

Members of the Joint Legislative Executive Committee:

Senator Bruce Dammeier

Senator Jeannie Darneille

Representative Paul Harris

Representative Laurie Jenkins

Representative Norm Johnson

Senator Karen Keiser

Jason McGill, Office of the Governor

Dorothy Teeter, Director, Health Care Authority

Kevin Quigley, Secretary, Department of Social and Health Services

David Lord, Director of Public Policy, Disability Rights Washington

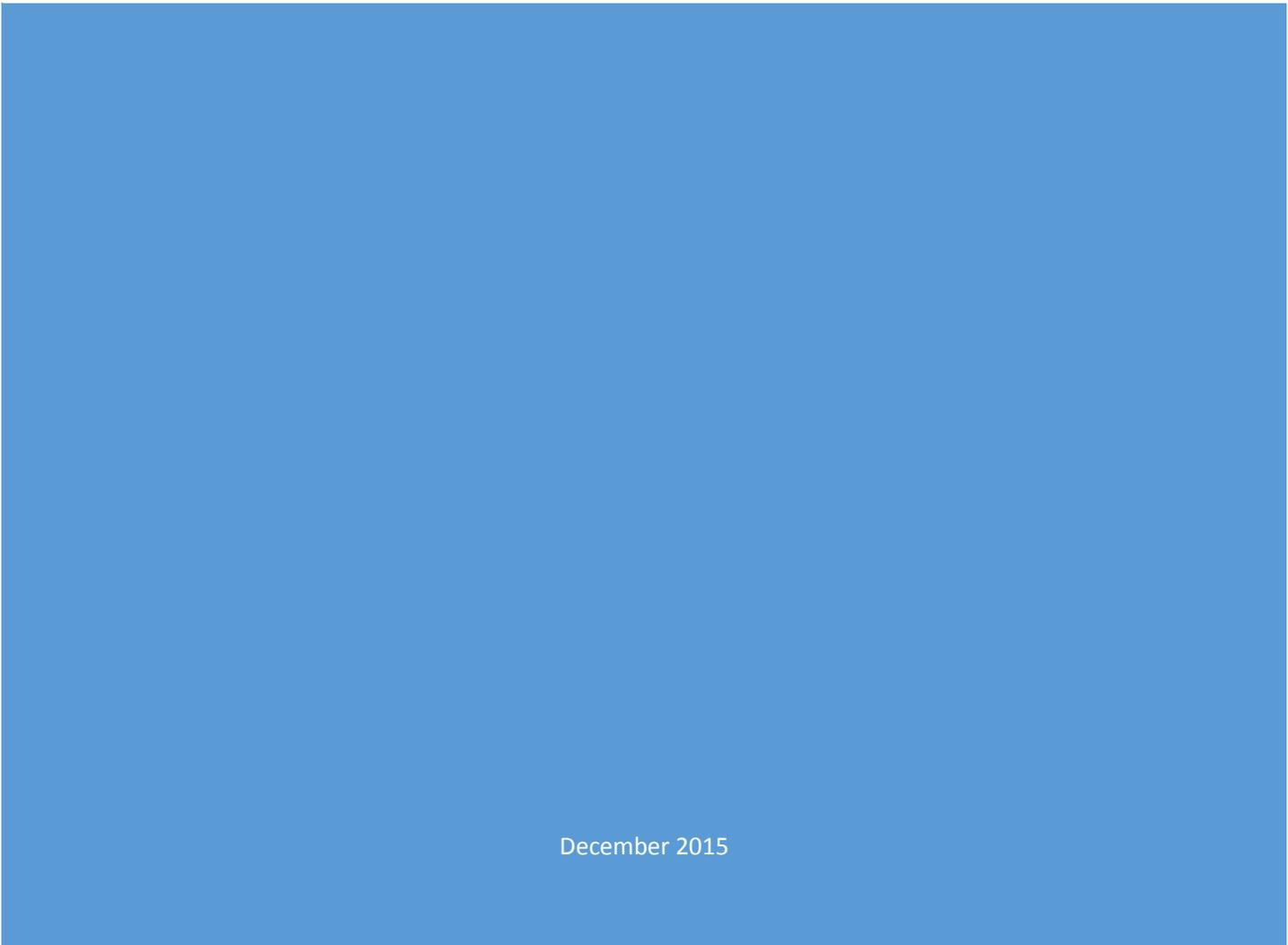
Lonnie Johns-Brown, Legislative Director, Office of the Insurance Commissioner

Patricia Hunter, Washington State Long-Term Care Ombudsman Program



THE JOINT LEGISLATIVE EXECUTIVE COMMITTEE
ON AGING AND DISABILITY ISSUES

2015 Addendum Report



December 2015

I. The Joint Legislative Executive Committee on Aging and Disability Issues

Enacting Legislation and Membership

The Joint Legislative Executive Committee on Aging and Disability Issues (Committee) was originally established in the 2013-15 operating budget. The enacting proviso required two reports: an Interim Report due in December 2013, and a Final Report due in December 2014. The 2014 Final Report detailed a list of policy options that identified key strategic actions the state may take to prepare for the aging population in Washington. Both the interim and final reports may be found at the Committee's website at:

<http://leg.wa.gov/JointCommittees/ADJLEC/Pages/default.aspx>.

During the 2015 legislative session, the Legislature passed Engrossed Substitute Senate Bill 6052, the 2015-17 operating budget. Section 206(10) of that bill continued the work of the Committee while modifying the Committee's membership and duties. The Committee, as established in ESSB 6052, consists of the following members¹:

Senate:

- Sen. Barbara Bailey, Co-Chair
- Sen. Bruce Dammeier
- Sen. Jeannie Darneille
- Sen. Karen Keiser

House of Representatives:

- Rep. Paul Harris
- Rep. Laurie Jinkins
- Rep. Norm Johnson
- Rep. Steve Tharinger, Co-Chair

Executive Branch:

- Jason McGill, Representing the Office of the Governor
- Kevin Quigley, Secretary of the Department of Social and Health Services
- Dorothy Teeter, Director of the Health Care Authority

Additional members:

- Lonnie Johns-Brown, Office of the Insurance Commissioner
- David Lord, Disability Rights Washington

¹ When the Committee was created in the 2013-15 operating budget, the Director of the Department of Retirement Systems was included as a Committee member. This member was not included in the 2015-17 operating budget language and no longer serves on the Committee. The members representing the Office of the Insurance Commissioner, Disability Rights Washington, and the Long-Term Care Ombuds were added to the Committee in the 2015-17 operating budget and were not members of the original Committee.

- Patricia Hunter, Long-Term Care Ombuds

Duties

The Committee must make recommendations and continue to identify key strategic actions to prepare for the aging of the population in Washington². This is to be accomplished through:

1. Identifying strategies to better serve the health care needs of an aging population and people with disabilities to promote healthy living and palliative care planning;
2. Identifying policy options to create financing mechanisms for long-term service and supports that allow individuals and families to meet their needs for service;
3. Identifying policies to promote financial security in retirement, support people who wish to stay in the workplace longer, and expand the availability of workplace retirement savings plans;
4. Identifying implementation strategies for the Bree Collaborative's palliative care and related guidelines;
5. Reviewing the regulation of continuing care retirement communities and ways to protect those who reside in them, including the consideration of effective disclosures to residents;
6. Identifying the needs of older people and people with disabilities for high quality public and private guardianship services and information about assisted decision-making options;
7. Identifying option for promoting client safety through residential care services and consider methods of protecting older people and people with disabilities from physical abuse and financial exploitation;
8. Identifying other policy options and recommendations to help communities adapt to the aging demographic in planning for housing, land use, and transportation; and
9. Devoting at least one meeting to a discussion of strategies to improve the quality of care, client safety and well-being, and staff safety within all community and institutional settings. During this meeting, the Committee must receive a comprehensive review of findings, since fiscal year 2010 by CMS and residential care services, in community settings, nursing homes, and each of the residential habilitation centers on medical

² The duties of the Commission were modified by ESSB 6052. For a complete list of the duties required of the Commission as originally enacted, please see the 2014 Final Report at <http://leg.wa.gov/JointCommittees/ADJLEC/Documents/JLEC%20Final%20Report.pdf>.

errors, inconsistencies between service plans and services provided, the use of restraints, and existence of hazardous environmental conditions.

Report requirements

This document comprises the first requirement of the Committee: an addendum report due to the legislature by December 10, 2015. The second requirement mandates that the Committee issue final recommendations by December 10, 2016.

As required by ESSB 6052, the addendum report to the legislature must include the following:

1. A description of the oversight role for Residential Care Services, the Long-Term Care Ombuds, the Centers for Medicare and Medicaid Services, and Disability Rights Washington;
2. An overview of the process for reviewing and responding to findings by Residential Care Services and the Centers for Medicare and Medicaid services from the provider perspective and the perspective of a state agency;
3. A description of the process for notifying the Office of the Governor and the Legislature when problems with quality of care, client safety and well-being, or staff safety arise within community or institutional settings;
4. A compilation of findings since fiscal year 2010 by the Centers for Medicare and Medicaid Services and Residential Care Services, at residential habilitation centers, nursing facilities, supported living, assisted living, group homes, companion homes, adult family homes, and all other community based providers;
5. An annotated and detailed list of all responses to findings by the Centers for Medicare and Medicaid Services and Residential Care Services, specific to the audits of the nursing facility at Lakeland Village since fiscal year 2010;
6. A review of the regulation of continuing care retirement communities and ways to protect those who reside in them, including the consideration of effective disclosures to residents;
7. The needs of older people and people with disabilities for high quality public and private guardianship services and information about assisted decision-making options;
8. Options for promoting client safety through residential care services and methods of protecting older people and people with disabilities from physical abuse and financial exploitation; and
9. A description of the method in place to ascertain the outcome of responses to findings.

Committee meetings

The Committee met in October, November, and December of 2015 and focused on the December 2015 addendum report requirements. Summaries of the meetings are detailed below and information and materials may be found at:

<https://app.leg.wa.gov/CMD/meeting.aspx?agency=4&year=2015&cid=18048>.

October 26, 2015

During the October meeting, the Committee heard presentations from the Department of Social and Health Services (DSHS) on Community and Institutional Settings, including a review of adverse findings in these settings for aging and disabled populations. The Committee also heard from DSHS and stakeholder groups on ways to improve the quality of care, client safety and well-being, and staff safety within these settings. Suggestions are summarized under Part II(4).

November 17, 2015

During the November meeting, the Committee heard presentations on guardianships, the state Alzheimer's Plan, and an update on the "dual eligible" program, Health Home Services for Dual Eligible Medicaid-Medicare Beneficiaries.

December 14, 2015

During the December meeting, the Committee heard presentations related to the practices of continuing care retirement communities as well as the state's pursuit of a federal 1115 Medicaid waiver to provide, among other things, service options to keep older adults in their homes and to delay their need for full Medicaid services.

II. 2015 Addendum Report.

ESSB 6052 required that the following nine items be studied by the Committee during the 2015 interim and be included in this Addendum Report. Those items and the activities undertaken by the Committee are listed below with links to the supporting materials provided.

1. Description of the oversight role for Residential Care Services, the Long-Term Care Ombuds, the Centers for Medicare and Medicaid Services, and Disability Rights Washington.

2. An overview of the process for reviewing and responding to findings by Residential Care Services and the Centers for Medicare and Medicaid services from the provider perspective and the perspective of a state agency.

3. A description of the process for notifying the Office of the Governor and the Legislature when problems with quality of care, client safety and well-being, or staff safety arise within community or institutional settings.

Presentations and overviews on items 1 through 3 from both the Aging and Long-Term Support Administration and the Developmental Disabilities Administration may be found at:

<https://app.leg.wa.gov/CMD/document.aspx?agency=4&year=2015&cid=18048&mid=22469&hid=178983>.

4. A compilation of findings since fiscal year 2010 by the Centers for Medicare and Medicaid Services and Residential Care Services, at residential habilitation centers, nursing facilities, supported living, assisted living, group homes, companion homes, adult family homes, and all other community based providers.

As part of the October discussion of the findings, the agency discussed its current activities and stakeholders were invited to inform the Committee on ways to improve the quality of care, client safety and well-being, and staff safety within the various settings in which people receive services. The findings and a summary of the findings may be found at:

<https://app.leg.wa.gov/CMD/agenda.aspx?agency=4&year=2015&cid=18048&mid=22469>.

Provider Panel

The Provider Panel consisted of representatives from the Washington Health Care Association, LeadingAge Washington, the Washington State Residential Care Council (now the Adult Family Home Council), Community Residential Services, Service Employees International Union 775, and the Washington Federation of State Employees.

- Restore funding for a quality improvement consultation program for facilities similar to the Quality Assurance Nurse program and the Quality Improvement Consultant program which provided valuable assistance for providers to understand how to implement regulations.
- Convene an interjurisdictional work group to identify and report on protocols to reduce investigational redundancies, promote interjurisdictional coordination and communication, and prioritize and address issues in a timely manner.
- Fund the development of free, web-based training regarding abuse prevention and reporting for all licensed providers and Department of Social and Health Services investigative staff.
- Provide additional money to properly incentivize the quality incentive under the new skilled nursing reimbursement system so it will lead to improvements in quality.
- Improve the retention of investigative staff at the Department of Social and Health Services.
- Address the senior housing needs of the state.
- Blend services in the places where seniors live to provide preventive services and better case management.
- Allow assisted living facilities to serve persons with high acuity needs so they have a role in serving people in the setting of their choice.
- Expand adult day health programs and examine referral protocols to these programs to keep people in their homes longer and out of hospital settings.
- Reward nursing facilities for case managing people and transitioning them to a lighter level of care.
- Create a culture that respects adult family home providers in the community through improved training for Residential Care Services staff.
- Allow adult family home providers to use on-the-job training to meet training requirements for long-term care workers.
- Provide better access to case management services for Medicaid clients to allow for more appropriate placements.
- Residential Care Services should incorporate the use of experts in its informal dispute resolution process to assess any impacts on the quality of care at issue in a particular case.
- Fund Medicaid rates and additional services so that rates are not below the costs of providing care.
- Adjust adult family home fees for providers with a high Medicaid occupancy and for operating in a quality manner.
- Include caseload forecasting for investigators in supported living.
- Provide additional funding for supported living providers to account for increases in the cost of living and compliance with Affordable Care Act requirements.

- Change statutes to recognize tiered rates for different staff in supported living by incorporating the program manager benchmark used in the Licensed Staff Residential program.
- Direct housing authorities to increase payment standards and make additional Section 8 funds available to allow clients within supported living to allow them to stay in their communities.
- Revise the supported living rate structure so it is more flexible and less prescriptive.
- Expand the Long-Term Care Ombuds' capacity to oversee facilities.
- Restore private home care agency rates and supplement them to allow for compliance with new minimum wage laws.
- Provide all residents with access to long-term care regardless of immigration status.
- Establish an emergency system at residential habilitation centers for staff to get immediate help when needed.
- Provide planned respite for caregivers so they do not go into a crisis situation.
- Direct residential habilitation center staff to train caregivers when people leave residential habilitation centers to ease the transition for the person.
- Allow caregivers in the community to come to residential habilitation centers for training to help the whole continuum of care.

Consumer Panel

The Consumer Panel consisted of representatives of the Arc of Washington State, Washington State Developmental Disabilities Council, Disability Rights Washington, the Washington State Long-Term Care Ombuds, and ACTION DD. Testimony is summarized below but may not necessarily be the opinions of all stakeholders in the consumer panel.

Development Disability Community

- Add the developmental disability community to the caseload forecast.
- Lower the developmental disability case management ratio.
- Increase wages for supported living providers.
- Ensure caregivers are adequately trained and are provided the necessary support to do their work, using all available technology.
- Establish a developmental disability ombuds program.
- Ensure trainings are available to parents and guardians as well as DSHS staff.
- Improve law enforcement and prosecution response to allegations of abuse.
- Provide victim/survivor services.
- Prevent isolation of vulnerable adults.
- Ensure the same level of auditing in the community as is provided in the residential habilitation centers.

- Require unannounced drop in visits for people living in the community.
- Expand respite opportunities to assist both people who live in residential habilitation centers and in the community.
- Make best use of the services that are provided in the residential habilitation centers.

Long-Term Care Community

- Funding needs to be provided to invest in long-term care workers and facilities.
- Implement the recommendations of the Adult Family Home Quality Assurance Panel and the Adult Abuse and Neglect Response Subcommittee.
- Require DSHS to follow its own policies on progressive enforcement.
- Require better investigative summary reports.
- Make enforcement information public.
- Update assisted living regulations to address nursing and therapy services, diet and activities, and other issues.
- Address high staff and administrator turnover in nursing homes.
- Make better use of volunteers and encourage volunteers to work as ombuds.

5. An annotated and detailed list of all responses to findings by the Centers for Medicare and Medicaid Services and Residential Care Services, specific to the audits of the nursing facility at Lakeland Village since fiscal year 2010.

The findings and a summary of the findings may be found at:

<https://app.leg.wa.gov/CMD/agenda.aspx?agency=4&year=2015&cid=18048&mid=22469>.

The committee has indicated that it will continue discussing these issues during the 2016 interim. Please see Part III of this report for additional detail.

6. A review of the regulation of continuing care retirement communities and ways to protect those who reside in them, including the consideration of effective disclosures to residents.

At the December Committee meeting, the Committee heard from stakeholders representing residents and consumers of continuing care retirement communities. It also heard from stakeholders representing the communities including LeadingAge Washington, Presbyterian Retirement Communities Northwest, and Emerald Communities.

Materials provided by the stakeholders during this discussion may be found at:

<https://app.leg.wa.gov/CMD/agenda.aspx?agency=4&year=2015&cid=18048&mid=22537>.

7. The needs of older people and people with disabilities for high quality public and private guardianship services and information about assisted decision-making options.

At the November Committee meeting, Shirley Bondon with the Office of Public Guardianship and David Lord with Disability Rights Washington provided an overview of guardianships in Washington. This included information on the types of guardianships available, the oversight level of each type of guardianship, and information on the Office of Public Guardianship. This presentation also included an overview of assisted decision-making. Information on these presentations are available at the Committee's website:

<https://app.leg.wa.gov/CMD/agenda.aspx?agency=4&year=2015&cid=18048&mid=22510>.

8. Options for promoting client safety through residential care services and methods of protecting older people and people with disabilities from physical abuse and financial exploitation.

Physical abuse and financial exploitation of vulnerable adults was not brought up for a separate discussion during the 2015 interim. However, the Committee has brought up these issues in past meetings. During the June 18, 2014 meeting, the Committee focused on issues relating to workforce quality and protection from elder abuse and exploitation. This review included overviews on: health care and home care workforce needs for the elderly; workforce quality, with discussion on the future of the long-term care workforce; and elder abuse and exploitation.

As part of its 2014 recommendations, the Committee made a recommendation on adopting an elder abuse omnibus bill which would update criminal codes to include a crime of financial exploitation of an adult and a reduction in the intent standard for the felony criminal mistreatment statute. The omnibus bill would also include additional resources to increase Adult Protective Services staffing.

9. A description of the method in place to ascertain the outcome of responses to findings.

Presentations and overviews on responses to findings from both the Aging and Long-Term Support Administration and the Developmental Disabilities Administration may be found at:

<https://app.leg.wa.gov/CMD/document.aspx?agency=4&year=2015&cid=18048&mid=22469&id=178983>.

III. Next steps.

The Committee identified three items in particular that it would like to include in its 2016 interim activities.

1. A meeting to further discuss the findings of the compliance report.

The Department of Social and Health Services has been working with stakeholders to identify and address concerns with its abuse response system. Recommendations have been issued by several work groups, including the Abuse/Neglect of Adults Who Are Vulnerable Study Group (“Improving Washington State’s Adult Abuse Response System”, 2010), the Adult Family Home Quality Assurance Panel (2013), and the currently active Adult Abuse/Neglect Response workgroup (Issued report in 2013).

DSHS and the stakeholders who participate in these workgroups have done substantial work to implement many of the recommendations of these reports. Accomplishments include a centralized data base of complaints, changes to the statutory definitions of abuse to improve clarity and objectivity, authorization for DSHS to levy civil fines, stop placements, and other conditions for all certified and licensed settings, online reporting for providers, and other improvements in the abuse response system. The Adult Abuse/Neglect Response workgroup continues to work on other recommendations.

The existing Adult Abuse/Neglect Response workgroup will expand its scope of work to include quality assurance, safety, and response to abuse and neglect in Residential Habilitation Centers and nursing facilities. This work will include close review of the RCS and CMS surveys since 2010 that were produced in response to the proviso giving the committee its charge, and the recently completed JLARC review of the DSHS Complaint Resolution Unit.

The Committee will provide time on its agenda for presentation and consideration of the workgroup’s findings and recommendations in a subsequent meeting

2. A meeting should include further discussion of guardianship issues.

The Committee received an introduction to guardianship issues. The overview discussed the Office of Public Guardianship and its regulatory role over the most closely monitored of the guardianship options. The Committee also learned about the assisted decision-making which uses alternative approaches to support the person in decision-making, to the extent feasible. These options may include powers of attorney, trusts, and payeeships.

The Committee finds that additional time should be spent exploring the guardianship system in Washington and the use of assisted decisionmaking. As raised by committee member David Lord with Disability Rights Washington in written comments to the

committee, "...the need for assistance with decision-making will increase sharply in coming years as the Age Wave crests. Costs associated with creating guardianships are likely to increase in the near future, unless state policy and services encourage and support the use of alternatives to guardianship."

3. An update on the Transformation waiver

The Committee supports the Department of Social and Health Services' continued pursuit of an 1115 waiver from the Centers for Medicare and Medicaid Services. The Committee will follow the progress of this "Transformation Waiver" through the federal approval process as well as agency implementation plans. The Committee has a particular interest in the ability of the waiver to provide options to keep older adults in their homes and to delay their need for full Medicaid services. It is expected that the implementation of the waiver will meet several goals of the Committee including additional support for unpaid family caregivers, and targeted services for certain older adults to help them avoid or delay an asset spenddown situation to qualify for full Medicaid services.