

## SB 266 STAFF MEASURE SUMMARY

### Senate Committee On Human Services, Mental Health and Recovery

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**Prepared By:** C. Ross, Counsel

**Meeting Dates:** 4/1, 4/8, 4/13

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#### WHAT THE MEASURE DOES:

Directs Department of Human Services (DHS) to recommend staff training and resident care improvements in long term facilities to the legislature by September 15, 2022. Sunsets January 2, 2023.

#### ISSUES DISCUSSED:

- Incorporating resident safety into definition of "substantial compliance" for purposes of regulatory enforcement
- Codifying what already exists; no displacement of existing requirements
- Relationship with and impact on previous legislation: House Bill 3359 (2017), House Bill 2600 (2019) and Senate Bill 917 (2019)
- Companion measure, Senate Bill 714, and its provisions
- Anchoring needs assessments to each resident's service plan
- Overall consistency of meeting a resident's needs being the primary compliance concern

#### EFFECT OF AMENDMENT:

*[-1 amendment dated 4/5/21]* Replaces the measure. Requires DHS to establish minimum standards to by rule by January 1, 2022 for determining whether residential, memory care, and long-term care facilities meet residents' needs. Requires at least: consistency with Centers for Medicare and Medicaid Services; current, person-centered service plans for each resident; immediate, 24-hour access to supports needed for activities of daily living; immediate response to issues effecting resident dignity; and care consistent with each resident's plan. Adds a representative from the relevant licensing authority to list of entities entitled to receive copies of initial status reports prepared by local area agencies or DHS upon receipt of notice from law enforcement that there is reasonable cause to believe abuse has occurred. Requires DHS to investigate alleged licensing violations and inadequate staffing complaints immediately. Adds to required content of such investigations and subsequent report, an assessment of facility staffing, if the complaint contains certain allegations. Requires DHS to prioritize residents in its enforcement process and to shift its strategy to increase pressures to ensure compliance when other strategies fail. Replaces DHS' current discretion to impose condition on facility license, with requirement to do so upon finding of immediate jeopardy. Adds to DHS' compliance assessment framework for residential care facilities, measuring the facility's ability to meet resident needs and the impact of noncompliance on residents. Requires DHS to publish and distribute framework and to make enhanced oversight operational by January 1, 2022. Requires DHS to publish notice online when a facility is subject to enhanced oversight. Requires DHS to report to the legislature by the same date. Sets effective date 91st day after *sine die* adjournment.

*[-5 amendment dated 4/8/21]* Duplicates and refines -1 amendment. Changes deadline for DHS to adopt rules from January to April 1, 2022. Replaces requirement for immediate responses to residents with *timely* responses, and immediate DHS investigation to investigation *without undue delay*. Specifies facility staffing assessments by DHS are primarily concerned with *consistency* in meeting resident needs. Restores DHS discretion to escalate regulatory pressure on facility as appropriate to ensure compliance. Clarifies distinctions between long term care facilities and residential care facilities with respect to definition of "substantial compliance." Changes deadline for DHS to publish framework, make enhanced oversight operational, and report to the legislature, from January to April 1, 2022. Removes a duplicative section.

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*[-6 amendment dated 4/12/21]* Incorporates and refines -5 amendment. Replaces requirement for DHS to establish minimum standards to by rule for determining whether facilities meet residents' needs, with requirement to assess same according to rules adopted by the Centers for Medicare and Medicaid Services, and to consider whether residents have person-centered service plans and whether the subject facility consistently provides: timely 24-hour access to supports needed for activities of daily living, timely responses to issues effecting resident dignity, and care in conformity with each resident's plan. Restores original definition of substantial compliance.

*[-10 amendment dated 4/13/21]* Incorporates and refines previous amendments. Replaces general references to staff and staffing with more specific reference to adequate numbers of "qualified awake direct care staff" throughout. Defines additional terms.

### **BACKGROUND:**

The Department of Human Services (DHS) is currently required to make an acuity-based staffing tool available that it and residential care facilities may use collaboratively to evaluate whether the facility has enough qualified caregivers to meet residents' needs and to share staffing plan information with residents and their families; however, the tool has not yet been fully implemented. Use of the acuity tool is optional and only required when DHS and a subject facility disagree about whether staffing is adequate. With respect to endorsed memory care facilities, DHS is currently required to adopt specified standards by rule, with input from the long term care community, to ensure the quality of care meets residents' needs.

Senate Bill 266 is a companion to Senate Bill 714, which imposes required staffing ratios at endorsed memory care facilities and residential care facilities unless the facility thoroughly documents its implementation of staffing ratios in conformity with the acuity tool.