
SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1727

State of Washington

63rd Legislature

2014 Regular Session

By House Appropriations (originally sponsored by Representatives Morrell, Green, Walsh, Ryu, Appleton, Tharinger, and Pollet)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to raising licensure limits to allow assisted
2 living facilities to serve a higher acuity resident population;
3 amending RCW 18.20.330, 18.20.160, 18.20.030, and 18.20.090; reenacting
4 and amending RCW 18.20.020; and adding new sections to chapter 18.20
5 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 18.20.330 and 2012 c 10 s 22 are each amended to read
8 as follows:

9 (1) Assisted living facilities are not required to provide
10 intermittent nursing services. The assisted living facility licensee
11 may choose to provide any of the following intermittent nursing
12 services through appropriately licensed and credentialed staff,
13 however, the facility may or may not need to provide additional
14 intermittent nursing services to comply with the reasonable
15 accommodation requirements in federal or state law:

- 16 (a) Medication administration;
17 (b) Administration of health care treatments;
18 (c) Diabetic management;
19 (d) Nonroutine ostomy care;

1 (e) Tube feeding; and

2 (f) Nurse delegation consistent with chapter 18.79 RCW.

3 (2) The licensee shall clarify on the disclosure form any
4 limitations, additional services, or conditions that may apply under
5 this section.

6 (3) In providing intermittent nursing services, the assisted living
7 facility shall observe the resident for changes in overall functioning
8 and respond appropriately when there are observable or reported changes
9 in the resident's physical, mental, or emotional functioning.

10 (4) The assisted living facility may provide intermittent nursing
11 services to (~~the extent permitted by RCW 18.20.160~~) residents who do
12 not require the frequent presence and supervision of a licensed
13 registered nurse.

14 NEW SECTION. Sec. 2. A new section is added to chapter 18.20 RCW
15 to read as follows:

16 (1) If an assisted living facility chooses to provide continuing
17 nursing services and admits a person who requires the frequent presence
18 and evaluation of a registered nurse, the facility must have a
19 registered nurse available to assure the safe delivery of the required
20 care and services in accordance with applicable rules developed by the
21 department.

22 (2) An assisted living facility that is unable to assure that a
23 registered nurse is available to provide or direct the safe delivery of
24 the required care and services may not admit or retain a person who
25 requires the frequent presence and evaluation of a registered nurse.
26 Persons who are receiving hospice care or have a short-term illness
27 that is expected to be resolved within fourteen days may remain or be
28 admitted in the facility provided that the facility is able to assure
29 that sufficient numbers and appropriately qualified and trained staff
30 or outside service providers under RCW 18.20.380 are available to meet
31 the needs of such persons.

32 (3) If the assisted living facility license has the designation
33 required under section 4 of this act, the facility may provide
34 continuing nursing services, as defined by the department in rule, to
35 meet the needs of residents whose needs could not be met through
36 intermittent nursing services under RCW 18.20.330.

1 (4) On the disclosure form, the assisted living facility shall
2 describe any limitations, additional services, or conditions that may
3 apply under this section.

4 (5) In providing continuing nursing services, the assisted living
5 facility shall observe the resident for changes in overall functioning
6 and respond appropriately when there are observable or reported changes
7 in the resident's physical, mental, or emotional functioning that
8 exceed the licensee's licensure limitations and any limitations
9 described in the disclosure form.

10 (6) If an assisted living facility with a continuing nursing
11 services designation determines, or has reason to believe, that a
12 resident needs continuing nursing services or rehabilitative therapy
13 services, then the facility must provide the resident, the resident's
14 legal representative, if any, and, if not, the resident representative,
15 with a department-approved written notice informing the client that he
16 or she may be eligible for complete or partial coverage of those
17 services through medicare, medicaid, veterans' benefits, long-term care
18 insurance, or other benefit programs. The department shall develop the
19 written notice with input from stakeholders. The notice must inform
20 residents of possible coverage under the benefit programs at reduced
21 fee or no cost to the resident, and provide contact information for
22 those programs. The notice must be signed and dated by the resident,
23 or his or her representative if the resident lacks capacity. The
24 facility must retain a copy of the signed notice. If the resident
25 chooses to use his or her benefits under medicare, medicaid, veterans'
26 benefits, long-term care insurance, or other programs, the resident may
27 elect to receive the nursing or rehabilitative therapy services offered
28 through an outside health care provider under RCW 18.20.380, or from
29 the assisted living facility if the facility is an authorized provider
30 under the relevant benefit program. An assisted living facility that
31 fails to give the notice required under this subsection and charges
32 residents privately for the provision of continuing nursing or
33 rehabilitative services and such services were otherwise eligible for
34 medicare, veterans' benefits, long-term care insurance, or other third-
35 party coverage, commits an act that constitutes financial exploitation
36 under chapter 74.34 RCW.

37 (7) An assisted living facility that chooses to provide continuing
38 nursing services, and has residents whose care is paid for in whole or

1 in part by medicaid, may not use the continuing nursing services
2 designation, or any physical plant alterations or application process
3 necessary for such designation, as a basis for the permanent discharge
4 of any of the facility's current medicaid residents. An assisted
5 living facility that receives an initial continuing nursing services
6 designation may not, for one year following the initial designation,
7 reduce the number of medicaid residents that the facility accepts or
8 retains below the highest number of medicaid residents living at the
9 facility within one year prior to the application for an initial
10 continuing nursing services designation.

11 **Sec. 3.** RCW 18.20.160 and 2012 c 10 s 11 are each amended to read
12 as follows:

13 ~~((No person operating an assisted living facility licensed under
14 this chapter shall admit to or retain in the assisted living facility
15 any aged person requiring nursing or medical care of a type provided by
16 institutions licensed under chapters 18.51, 70.41 or 71.12 RCW, except
17 that when registered nurses are available, and upon a doctor's order
18 that a supervised medication service is needed, it may be provided.
19 Supervised medication services, as defined by the department and
20 consistent with chapters 69.41 and 18.79 RCW, may include an approved
21 program of self-medication or self-directed medication. Such
22 medication service shall be provided only to residents who otherwise
23 meet all requirements for residency in an assisted living facility. No
24 assisted living facility shall admit or retain a person who requires
25 the frequent presence and frequent evaluation of a registered nurse,
26 excluding persons who are receiving hospice care or persons who have a
27 short term illness that is expected to be resolved within fourteen
28 days.)) The assisted living facility licensed under this chapter must
29 assume general responsibility for each resident and must promote each
30 resident's health, safety, and well-being consistent with the resident
31 negotiated care plan. In addition, the assisted living facility may
32 provide assistance with activities of daily living, health support
33 services, intermittent nursing services, and continuing nursing
34 services, as may be further defined by the department in rule, and
35 consistent with the care and services included in the disclosure form
36 required under RCW 18.20.300. To provide continuing nursing services,
37 the licensee shall obtain from the department a designation as required~~

1 by section 4 of this act. Without first obtaining the required
2 designation on its license, an assisted living facility may not admit
3 or retain a person who requires the frequent presence and frequent
4 evaluation of a licensed registered nurse, except for persons who are
5 receiving hospice care or persons who have a short-term illness that is
6 expected to be resolved within fourteen days. The assisted living
7 facility must assure that sufficient numbers and appropriately
8 qualified and trained staff are available to provide care and services
9 consistent with this chapter.

10 NEW SECTION. Sec. 4. A new section is added to chapter 18.20 RCW
11 to read as follows:

12 (1) An assisted living facility may provide continuing nursing
13 services if it secures a designation on its license from the
14 department.

15 (2) At least sixty days prior to the anticipated designation to
16 provide continuing nursing services, the applicant must submit to the
17 department a completed application on a form developed by the
18 department.

19 (3) Prior to granting an initial continuing nursing services
20 designation, the department shall make an inspection visit to the
21 assisted living facility applicant to determine the facility's
22 compliance with the continuing nursing services rules. At least once
23 every eighteen months, the department shall inspect the assisted living
24 facility to determine the facility's compliance with the applicable
25 rules to determine whether the designation may be continued.

26 (4) The department shall establish fees to be paid by assisted
27 living facilities prior to the issuance of an initial or renewal
28 designation under this section. The department shall establish the fee
29 at a level that covers the cost of the administration of the
30 designation program.

31 (5) For the purposes of this section, "continuing nursing services"
32 means the resident has been assessed with a condition or diagnosis that
33 is expected to require the frequent presence and supervision of a
34 licensed registered nurse.

35 **Sec. 5.** RCW 18.20.030 and 2012 c 10 s 3 are each amended to read
36 as follows:

1 (1) After January 1, 1958, no person shall operate or maintain an
2 assisted living facility as defined in this chapter within this state
3 without a license under this chapter.

4 (2) An assisted living facility license is not required for the
5 housing, or services, that are customarily provided under landlord
6 tenant agreements governed by the residential landlord-tenant act,
7 chapter 59.18 RCW, or when housing nonresident individuals who chose to
8 participate in programs or services under subsection (5) of this
9 section, when offered by the assisted living facility licensee or the
10 licensee's contractor. This subsection does not prohibit the licensee
11 from furnishing written information concerning available community
12 resources to the nonresident individual or the individual's family
13 members or legal representatives. The licensee may not require the use
14 of any particular service provider.

15 (3) Residents receiving domiciliary care, directly or indirectly by
16 the assisted living facility, are not considered nonresident
17 individuals for the purposes of this section.

18 (4) An assisted living facility license is required when any person
19 other than an outside service provider, under RCW 18.20.380, or family
20 member:

21 (a) Assumes general responsibility for the safety and well-being of
22 a resident;

23 (b) Provides assistance with activities of daily living, either
24 directly or indirectly;

25 (c) Provides health support services, either directly or
26 indirectly; (~~or~~)

27 (d) Provides intermittent nursing services, either directly or
28 indirectly; or

29 (e) Provides continuing nursing services, either directly or
30 indirectly.

31 (5) An assisted living facility license is not required for one or
32 more of the following services that may, upon the request of the
33 nonresident, be provided to a nonresident individual: (a) Emergency
34 assistance provided on an intermittent or nonroutine basis; (b)
35 systems, including technology-based monitoring devices, employed by
36 independent senior housing, or independent living units in continuing
37 care retirement communities, to respond to the potential need for
38 emergency services; (c) scheduled and nonscheduled blood pressure

1 checks; (d) nursing assessment services to determine whether referral
2 to an outside health care provider is recommended; (e) making and
3 reminding the nonresident of health care appointments; (f) preadmission
4 assessment for the purposes of transitioning to a licensed care
5 setting; (g) medication assistance which may include reminding or
6 coaching the nonresident, opening the nonresident's medication
7 container, using an enabler, and handing prefilled insulin syringes to
8 the nonresident; (h) falls risk assessment; (i) nutrition management
9 and education services; (j) dental services; (k) wellness programs; (l)
10 prefilling insulin syringes when performed by a nurse licensed under
11 chapter 18.79 RCW; or (m) services customarily provided under landlord
12 tenant agreements governed by the residential landlord-tenant act,
13 chapter 59.18 RCW.

14 **Sec. 6.** RCW 18.20.020 and 2012 c 10 s 2 are each reenacted and
15 amended to read as follows:

16 The definitions in this section apply throughout this chapter
17 unless the context clearly requires otherwise.

18 (1) "Adult day services" means care and services provided to a
19 nonresident individual by the assisted living facility on the assisted
20 living facility premises, for a period of time not to exceed ten
21 continuous hours, and does not involve an overnight stay.

22 (2) "Assisted living facility" means any home or other institution,
23 however named, which is advertised, announced, or maintained for the
24 express or implied purpose of providing housing, basic services, and
25 assuming general responsibility for the safety and well-being of the
26 residents, and may also provide domiciliary care, consistent with
27 chapter 142, Laws of 2004, to seven or more residents after July 1,
28 2000. However, an assisted living facility that is licensed for three
29 to six residents prior to or on July 1, 2000, may maintain its assisted
30 living facility license as long as it is continually licensed as an
31 assisted living facility. "Assisted living facility" shall not include
32 facilities certified as group training homes pursuant to RCW
33 71A.22.040, nor any home, institution or section thereof which is
34 otherwise licensed and regulated under the provisions of state law
35 providing specifically for the licensing and regulation of such home,
36 institution or section thereof. Nor shall it include any independent

1 senior housing, independent living units in continuing care retirement
2 communities, or other similar living situations including those
3 subsidized by the department of housing and urban development.

4 (3) "Basic services" means housekeeping services, meals, nutritious
5 snacks, laundry, and activities.

6 (4) "Department" means the state department of social and health
7 services.

8 (5) "Domiciliary care" means: Assistance with activities of daily
9 living provided by the assisted living facility either directly or
10 indirectly; or health support services, if provided directly or
11 indirectly by the assisted living facility; or intermittent nursing
12 services, if provided directly or indirectly by the assisted living
13 facility; or continuing nursing services, if provided directly or
14 indirectly by the assisted living facility.

15 (6) "General responsibility for the safety and well-being of the
16 resident" means the provision of the following: Prescribed general low
17 sodium diets; prescribed general diabetic diets; prescribed mechanical
18 soft foods; emergency assistance; monitoring of the resident; arranging
19 health care appointments with outside health care providers and
20 reminding residents of such appointments as necessary; coordinating
21 health care services with outside health care providers consistent with
22 RCW 18.20.380; assisting the resident to obtain and maintain glasses,
23 hearing aids, dentures, canes, crutches, walkers, wheelchairs, and
24 assistive communication devices; observation of the resident for
25 changes in overall functioning; blood pressure checks as scheduled;
26 responding appropriately when there are observable or reported changes
27 in the resident's physical, mental, or emotional functioning; or
28 medication assistance as permitted under RCW 69.41.085 and as defined
29 in RCW 69.41.010.

30 (7) "Legal representative" means a person or persons identified in
31 RCW 7.70.065 who may act on behalf of the resident pursuant to the
32 scope of their legal authority. The legal representative shall not be
33 affiliated with the licensee, assisted living facility, or management
34 company, unless the affiliated person is a family member of the
35 resident.

36 (8) "Nonresident individual" means a person who resides in
37 independent senior housing, independent living units in continuing care
38 retirement communities, or in other similar living environments or in

1 an unlicensed room located within an assisted living facility. Nothing
2 in this chapter prohibits nonresidents from receiving one or more of
3 the services listed in RCW 18.20.030(5) or requires licensure as an
4 assisted living facility when one or more of the services listed in RCW
5 18.20.030(5) are provided to nonresidents. A nonresident individual
6 may not receive domiciliary care, as defined in this chapter, directly
7 or indirectly by the assisted living facility and may not receive the
8 items and services listed in subsection (6) of this section, except
9 during the time the person is receiving adult day services as defined
10 in this section.

11 (9) "Person" means any individual, firm, partnership, corporation,
12 company, association, or joint stock association, and the legal
13 successor thereof.

14 (10) "Resident" means an individual who is not related by blood or
15 marriage to the operator of the assisted living facility, and by reason
16 of age or disability, chooses to reside in the assisted living facility
17 and receives basic services and one or more of the services listed
18 under general responsibility for the safety and well-being of the
19 resident and may receive domiciliary care or respite care provided
20 directly or indirectly by the assisted living facility and shall be
21 permitted to receive hospice care through an outside service provider
22 when arranged by the resident or the resident's legal representative
23 under RCW 18.20.380.

24 (11) "Resident applicant" means an individual who is seeking
25 admission to a licensed assisted living facility and who has completed
26 and signed an application for admission, or such application for
27 admission has been completed and signed in their behalf by their legal
28 representative if any, and if not, then the designated representative
29 if any.

30 (12) "Resident's representative" means a person designated
31 voluntarily by a competent resident, in writing, to act in the
32 resident's behalf concerning the care and services provided by the
33 assisted living facility and to receive information from the assisted
34 living facility, if there is no legal representative. The resident's
35 competence shall be determined using the criteria in RCW
36 11.88.010(1)(e). The resident's representative may not be affiliated
37 with the licensee, assisted living facility, or management company,

1 unless the affiliated person is a family member of the resident. The
2 resident's representative shall not have authority to act on behalf of
3 the resident once the resident is no longer competent.

4 (13) "Secretary" means the secretary of social and health services.

5 **Sec. 7.** RCW 18.20.090 and 2012 c 10 s 5 are each amended to read
6 as follows:

7 (1) The department shall adopt, amend, and promulgate such rules,
8 regulations, and standards with respect to all assisted living
9 facilities and operators thereof to be licensed hereunder as may be
10 designed to further the accomplishment of the purposes of this chapter
11 in promoting safe and adequate care of individuals in assisted living
12 facilities and the sanitary, hygienic, and safe conditions of the
13 assisted living facility in the interest of public health, safety, and
14 welfare.

15 (2) The department shall also amend and adopt rules regarding the
16 provision of continuing nursing services, including rules that define:

17 (a) The process for designation of assisted living facilities,
18 including required notices to be provided to residents and their legal
19 representative if any, and if not, the resident's representative;

20 (b) The extent to which continuing nursing services may be provided
21 in assisted living facilities;

22 (c) Staffing requirements; and

23 (d) Physical plant requirements.

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