

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE SENATE BILL 6515**

Chapter 263, Laws of 2020

66th Legislature  
2020 Regular Session

SKILLED NURSING FACILITIES--VARIOUS PROVISIONS

EFFECTIVE DATE: June 11, 2020

Passed by the Senate March 12, 2020  
Yeas 48 Nays 0

CYRUS HABIB

**President of the Senate**

Passed by the House March 12, 2020  
Yeas 97 Nays 0

Laurie Jinkins

**Speaker of the House of  
Representatives**

Approved March 31, 2020 11:25 AM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 6515** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

**Secretary**

FILED

March 31, 2020

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE SENATE BILL 6515

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AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

By Senate Ways & Means (originally sponsored by Senators Van De Wege, Randall, Mullet, Takko, Lovelett, Lias, Conway, Hasegawa, and Wilson, C.)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to nursing facilities; and amending RCW  
2 18.51.091, 18.51.230, and 74.42.360.

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

4 **Sec. 1.** RCW 18.51.091 and 1987 c 476 s 24 are each amended to  
5 read as follows:

6 The department shall (~~make or cause to be made at least one~~  
7 ~~inspection of~~) inspect each nursing home (~~prior to license renewal~~  
8 ~~and shall inspect community-based services as part of the licensing~~  
9 ~~renewal survey~~) periodically in accordance with federal standards  
10 under 42 C.F.R. Part 488, Subpart E. The inspection shall be made  
11 without providing advance notice of it. Every inspection may include  
12 an inspection of every part of the premises and an examination of all  
13 records, methods of administration, the general and special dietary  
14 and the stores and methods of supply. Those nursing homes that  
15 provide community-based care shall establish and maintain separate  
16 and distinct accounting and other essential records for the purpose  
17 of appropriately allocating costs of the providing of such care:  
18 PROVIDED, That such costs shall not be considered allowable costs for  
19 reimbursement purposes under chapter 74.46 RCW. Following such  
20 inspection or inspections, written notice of any violation of this  
21 law or the rules and regulations promulgated hereunder, shall be

1 given to the applicant or licensee and the department. The notice  
2 shall describe the reasons for the facility's noncompliance. The  
3 department may prescribe by regulations that any licensee or  
4 applicant desiring to make specified types of alterations or  
5 additions to its facilities or to construct new facilities shall,  
6 before commencing such alteration, addition or new construction,  
7 submit its plans and specifications therefor to the department for  
8 preliminary inspection and approval or recommendations with respect  
9 to compliance with the regulations and standards herein authorized.

10 **Sec. 2.** RCW 18.51.230 and 1981 2nd ex.s. c 11 s 4 are each  
11 amended to read as follows:

12 The department shall, in addition to any inspections conducted  
13 pursuant to complaints filed pursuant to RCW 18.51.190, conduct (~~at~~  
14 ~~least one general inspection prior to license renewal of all nursing~~  
15 ~~homes in the state without providing advance notice of such~~  
16 ~~inspection. Periodically, such inspection shall take place in part~~  
17 ~~between the hours of 7 p.m. and 5 a.m. or on weekends)) a periodic  
18 general inspection of each nursing home in the state without  
19 providing advance notice of such inspection. Such inspections must  
20 conform to the federal standards for surveys under 42 C.F.R. Part  
21 488, Subpart E.~~

22 **Sec. 3.** RCW 74.42.360 and 2019 c 12 s 2 are each amended to read  
23 as follows:

24 (1) The facility shall have staff on duty twenty-four hours daily  
25 sufficient in number and qualifications to carry out the provisions  
26 of RCW 74.42.010 through 74.42.570 and the policies,  
27 responsibilities, and programs of the facility.

28 (2) The department shall institute minimum staffing standards for  
29 nursing homes. Beginning July 1, 2016, facilities must provide a  
30 minimum of 3.4 hours per resident day of direct care. Direct care  
31 staff has the same meaning as defined in RCW 74.42.010. The minimum  
32 staffing standard includes the time when such staff are providing  
33 hands-on care related to activities of daily living and nursing-  
34 related tasks, as well as care planning. The legislature intends to  
35 increase the minimum staffing standard to 4.1 hours per resident day  
36 of direct care, but the effective date of a standard higher than 3.4  
37 hours per resident day of direct care will be identified if and only

1 if funding is provided explicitly for an increase of the minimum  
2 staffing standard for direct care.

3 (a) The department shall establish in rule a system of compliance  
4 of minimum direct care staffing standards by January 1, 2016.  
5 Oversight must be done at least quarterly using the centers for  
6 medicare and medicaid services' payroll-based journal and nursing  
7 home facility census and payroll data.

8 (b) The department shall establish in rule by January 1, 2016, a  
9 system of financial penalties for facilities out of compliance with  
10 minimum staffing standards. No monetary penalty may be issued during  
11 the implementation period of July 1, 2016, through September 30,  
12 2016. If a facility is found noncompliant during the implementation  
13 period, the department shall provide a written notice identifying the  
14 staffing deficiency and require the facility to provide a  
15 sufficiently detailed correction plan to meet the statutory minimum  
16 staffing levels. Monetary penalties begin October 1, 2016. Monetary  
17 penalties must be established based on a formula that calculates the  
18 cost of wages and benefits for the missing staff hours. If a facility  
19 meets the requirements in subsection (3) or (4) of this section, the  
20 penalty amount must be based solely on the wages and benefits of  
21 certified nurse aides. The first monetary penalty for noncompliance  
22 must be at a lower amount than subsequent findings of noncompliance.  
23 Monetary penalties established by the department may not exceed two  
24 hundred percent of the wage and benefit costs that would have  
25 otherwise been expended to achieve the required staffing minimum  
26 hours per resident day for the quarter. A facility found out of  
27 compliance must be assessed a monetary penalty at the lowest penalty  
28 level if the facility has met or exceeded the requirements in  
29 subsection (2) of this section for three or more consecutive years.  
30 Beginning July 1, 2016, pursuant to rules established by the  
31 department, funds that are received from financial penalties must be  
32 used for technical assistance, specialized training, or an increase  
33 to the quality enhancement established in RCW 74.46.561.

34 (c) The department shall establish in rule an exception allowing  
35 geriatric behavioral health workers as defined in RCW 74.42.010 to be  
36 recognized in the minimum staffing requirements as part of the direct  
37 care service delivery to individuals who have a behavioral health  
38 condition. Hours worked by geriatric behavioral health workers may be  
39 recognized as direct care hours for purposes of the minimum staffing  
40 requirements only up to a portion of the total hours equal to the

1 proportion of resident days of clients with a behavioral health  
2 condition identified at that facility on the most recent semiannual  
3 minimum data set. In order to qualify for the exception:

4 (i) The worker must:

5 (A) Have a bachelor's or master's degree in social work,  
6 behavioral health, or other related areas; or

7 (B) Have at least three years experience providing care for  
8 individuals with chronic mental health issues, dementia, or  
9 intellectual and developmental disabilities in a long-term care or  
10 behavioral health care setting; or

11 (C) Have successfully completed a facility-based behavioral  
12 health curriculum approved by the department under RCW 74.39A.078;

13 (ii) Any geriatric behavioral health worker holding less than a  
14 master's degree in social work must be directly supervised by an  
15 employee who has a master's degree in social work or a registered  
16 nurse.

17 (d) (i) The department shall establish a limited exception to the  
18 3.4 hours per resident day staffing requirement for facilities  
19 demonstrating a good faith effort to hire and retain staff.

20 (ii) To determine initial facility eligibility for exception  
21 consideration, the department shall send surveys to facilities  
22 anticipated to be below, at, or slightly above the 3.4 hours per  
23 resident day requirement. These surveys must measure the hours per  
24 resident day in a manner as similar as possible to the centers for  
25 medicare and medicaid services' payroll-based journal and cover the  
26 staffing of a facility from October through December of 2015, January  
27 through March of 2016, and April through June of 2016. A facility  
28 must be below the 3.4 staffing standard on all three surveys to be  
29 eligible for exception consideration. If the staffing hours per  
30 resident day for a facility declines from any quarter to another  
31 during the survey period, the facility must provide sufficient  
32 information to the department to allow the department to determine if  
33 the staffing decrease was deliberate or a result of neglect, which is  
34 the lack of evidence demonstrating the facility's efforts to maintain  
35 or improve its staffing ratio. The burden of proof is on the facility  
36 and the determination of whether or not the decrease was deliberate  
37 or due to neglect is entirely at the discretion of the department. If  
38 the department determines a facility's decline was deliberate or due  
39 to neglect, that facility is not eligible for an exception  
40 consideration.

1 (iii) To determine eligibility for exception approval, the  
2 department shall review the plan of correction submitted by the  
3 facility. Before a facility's exception may be renewed, the  
4 department must determine that sufficient progress is being made  
5 towards reaching the 3.4 hours per resident day staffing requirement.  
6 When reviewing whether to grant or renew an exception, the department  
7 must consider factors including but not limited to: Financial  
8 incentives offered by the facilities such as recruitment bonuses and  
9 other incentives; the robustness of the recruitment process; county  
10 employment data; specific steps the facility has undertaken to  
11 improve retention; improvements in the staffing ratio compared to the  
12 baseline established in the surveys and whether this trend is  
13 continuing; and compliance with the process of submitting staffing  
14 data, adherence to the plan of correction, and any progress toward  
15 meeting this plan, as determined by the department.

16 (iv) Only facilities that have their direct care component rate  
17 increase capped according to RCW 74.46.561 are eligible for exception  
18 consideration. Facilities that will have their direct care component  
19 rate increase capped for one or two years are eligible for exception  
20 consideration through June 30, 2017. Facilities that will have their  
21 direct care component rate increase capped for three years are  
22 eligible for exception consideration through June 30, 2018.

23 (v) The department may not grant or renew a facility's exception  
24 if the facility meets the 3.4 hours per resident day staffing  
25 requirement and subsequently drops below the 3.4 hours per resident  
26 day staffing requirement.

27 (vi) The department may grant exceptions for a six-month period  
28 per exception. The department's authority to grant exceptions to the  
29 3.4 hours per resident day staffing requirement expires June 30,  
30 2018.

31 (3) (a) Large nonessential community providers must have a  
32 registered nurse on duty directly supervising resident care twenty-  
33 four hours per day, seven days per week.

34 (b) (i) The department shall establish a limited exception process  
35 ~~((to facilities))~~ for large nonessential community providers that can  
36 demonstrate a good faith effort to hire a registered nurse for the  
37 last eight hours of required coverage per day. In granting an  
38 exception, the department may consider the competitiveness of the  
39 wages and benefits offered as compared to nursing facilities in  
40 comparable geographic or metropolitan areas within Washington state,

1 the provider's recruitment and retention efforts, and the  
2 availability of registered nurses in the particular geographic area.  
3 A one-year exception may be granted and may be renewable (~~for up to~~  
4 ~~three consecutive years~~); however, the department may limit the  
5 admission of new residents, based on medical conditions or  
6 complexities, when a registered nurse is not on-site and readily  
7 available. If a (~~facility~~) large nonessential community provider  
8 receives an (~~exemption~~) exception, that information must be  
9 included in the department's nursing home locator. (~~After June 30,~~  
10 ~~2019~~)

11 (ii) By August 1, 2023, and every three years thereafter, the  
12 department, along with a stakeholder work group established by the  
13 department, shall conduct a review of the exceptions process to  
14 determine if it is still necessary. As part of this review, the  
15 department shall provide the legislature with a report that includes  
16 enforcement and citation data for large nonessential community  
17 providers that were granted an exception in the three previous fiscal  
18 years in comparison to those without an exception. The report must  
19 include a similar comparison of data, provided to the department by  
20 the long-term care ombuds, on long-term care ombuds referrals for  
21 large nonessential community providers that were granted an exception  
22 in the three previous fiscal years and those without an exception.  
23 This report, along with a recommendation as to whether the exceptions  
24 process should continue, is due to the legislature by December 1st of  
25 each year in which a review is conducted. Based on the  
26 recommendations outlined in this report, the legislature may take  
27 action to end the exceptions process.

28 (4) Essential community providers and small nonessential  
29 community providers must have a registered nurse on duty directly  
30 supervising resident care a minimum of sixteen hours per day, seven  
31 days per week, and a registered nurse or a licensed practical nurse  
32 on duty directly supervising resident care the remaining eight hours  
33 per day, seven days per week.

34 (5) For the purposes of this section, "behavioral health  
35 condition" means one or more of the behavioral symptoms specified in  
36 section E of the minimum data set.

Passed by the Senate March 12, 2020.  
Passed by the House March 12, 2020.  
Approved by the Governor March 31, 2020.

Filed in Office of Secretary of State March 31, 2020.

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