
SECOND SUBSTITUTE HOUSE BILL 1727

State of Washington 63rd Legislature 2013 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. If the resident chooses to use his or her benefits
23 under medicare, medicaid, veterans' benefits, long-term care insurance,
24 or other programs, the resident may then contract for the provision of
25 nursing or rehabilitative therapy services offered through an outside
26 health care provider under RCW 18.20.380.

27 (7) An assisted living facility that chooses to provide continuing
28 nursing services, and has residents whose care is paid for in whole or
29 in part by medicaid, may not use the continuing nursing services
30 designation, or any physical plant alterations or application process
31 necessary for such designation, as a basis for the permanent discharge
32 of any of the facility's current medicaid residents. An assisted
33 living facility that receives an initial continuing nursing services
34 designation may not, for one year following the initial designation,
35 reduce the number of medicaid residents that the facility accepts or
36 retains below the highest number of medicaid residents living at the
37 facility within one year prior to the application for an initial
38 continuing nursing services designation.

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

3 (~~No person operating an assisted living facility licensed under
4 this chapter shall admit to or retain in the assisted living facility
5 any aged person requiring nursing or medical care of a type provided by
6 institutions licensed under chapters 18.51, 70.41 or 71.12 RCW, except
7 that when registered nurses are available, and upon a doctor's order
8 that a supervised medication service is needed, it may be provided.
9 Supervised medication services, as defined by the department and
10 consistent with chapters 69.41 and 18.79 RCW, may include an approved
11 program of self-medication or self-directed medication. Such
12 medication service shall be provided only to residents who otherwise
13 meet all requirements for residency in an assisted living facility. No
14 assisted living facility shall admit or retain a person who requires
15 the frequent presence and frequent evaluation of a registered nurse,
16 excluding persons who are receiving hospice care or persons who have a
17 short-term illness that is expected to be resolved within fourteen
18 days.)) The assisted living facility licensed under this chapter must
19 assume general responsibility for each resident and must promote each
20 resident's health, safety, and well-being consistent with the resident
21 negotiated care plan. In addition, the assisted living facility may
22 provide assistance with activities of daily living, health support
23 services, intermittent nursing services, and continuing nursing
24 services, as may be further defined by the department in rule, and
25 consistent with the care and services included in the disclosure form
26 required under RCW 18.20.300. To provide continuing nursing services,
27 the licensee shall obtain from the department a designation as required
28 by section 4 of this act. Without first obtaining the required
29 designation on its license, an assisted living facility may not admit
30 or retain a person who requires the frequent presence and frequent
31 evaluation of a licensed registered nurse, except for persons who are
32 receiving hospice care or persons who have a short-term illness that is
33 expected to be resolved within fourteen days. The assisted living
34 facility must assure that sufficient numbers and appropriately
35 qualified and trained staff are available to provide care and services
36 consistent with this chapter.~~

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 18.20 RCW
2 to read as follows:

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

6 (2) At least sixty days prior to the anticipated designation to
7 provide continuing nursing services, the applicant must submit to the
8 department a completed application on a form developed by the
9 department.

10 (3) Prior to granting an initial continuing nursing services
11 designation, the department shall make an inspection visit to the
12 assisted living facility applicant to determine the facility's
13 compliance with the continuing nursing services rules. At least once
14 every eighteen months, the department shall inspect the assisted living
15 facility to determine the facility's compliance with the applicable
16 rules to determine whether the designation may be continued.

17 (4) The department shall establish fees to be paid by assisted
18 living facilities prior to the issuance of an initial or renewal
19 designation under this section. The department shall establish the fee
20 at a level that covers the cost of the administration of the
21 designation program.

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

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

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

31 (2) An assisted living facility license is not required for the
32 housing, or services, that are customarily provided under landlord
33 tenant agreements governed by the residential landlord-tenant act,
34 chapter 59.18 RCW, or when housing nonresident individuals who chose to
35 participate in programs or services under subsection (5) of this
36 section, when offered by the assisted living facility licensee or the
37 licensee's contractor. This subsection does not prohibit the licensee

1 from furnishing written information concerning available community
2 resources to the nonresident individual or the individual's family
3 members or legal representatives. The licensee may not require the use
4 of any particular service provider.

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

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

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

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

15 (c) Provides health support services, either directly or
16 indirectly; (~~(e)~~)

17 (d) Provides intermittent nursing services, either directly or
18 indirectly; or

19 (e) Provides continuing nursing services, either directly or
20 indirectly.

21 (5) An assisted living facility license is not required for one or
22 more of the following services that may, upon the request of the
23 nonresident, be provided to a nonresident individual: (a) Emergency
24 assistance provided on an intermittent or nonroutine basis; (b)
25 systems, including technology-based monitoring devices, employed by
26 independent senior housing, or independent living units in continuing
27 care retirement communities, to respond to the potential need for
28 emergency services; (c) scheduled and nonscheduled blood pressure
29 checks; (d) nursing assessment services to determine whether referral
30 to an outside health care provider is recommended; (e) making and
31 reminding the nonresident of health care appointments; (f) preadmission
32 assessment for the purposes of transitioning to a licensed care
33 setting; (g) medication assistance which may include reminding or
34 coaching the nonresident, opening the nonresident's medication
35 container, using an enabler, and handing prefilled insulin syringes to
36 the nonresident; (h) falls risk assessment; (i) nutrition management
37 and education services; (j) dental services; (k) wellness programs; (l)
38 prefilling insulin syringes when performed by a nurse licensed under

1 chapter 18.79 RCW; or (m) services customarily provided under landlord
2 tenant agreements governed by the residential landlord-tenant act,
3 chapter 59.18 RCW.

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

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

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

12 (2) "Assisted living facility" means any home or other institution,
13 however named, which is advertised, announced, or maintained for the
14 express or implied purpose of providing housing, basic services, and
15 assuming general responsibility for the safety and well-being of the
16 residents, and may also provide domiciliary care, consistent with
17 chapter 142, Laws of 2004, to seven or more residents after July 1,
18 2000. However, an assisted living facility that is licensed for three
19 to six residents prior to or on July 1, 2000, may maintain its assisted
20 living facility license as long as it is continually licensed as an
21 assisted living facility. "Assisted living facility" shall not include
22 facilities certified as group training homes pursuant to RCW
23 71A.22.040, nor any home, institution or section thereof which is
24 otherwise licensed and regulated under the provisions of state law
25 providing specifically for the licensing and regulation of such home,
26 institution or section thereof. Nor shall it include any independent
27 senior housing, independent living units in continuing care retirement
28 communities, or other similar living situations including those
29 subsidized by the department of housing and urban development.

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

32 (4) "Department" means the state department of social and health
33 services.

34 (5) "Domiciliary care" means: Assistance with activities of daily
35 living provided by the assisted living facility either directly or
36 indirectly; or health support services, if provided directly or
37 indirectly by the assisted living facility; or intermittent nursing

1 services, if provided directly or indirectly by the assisted living
2 facility; or continuing nursing services, if provided directly or
3 indirectly by the assisted living facility.

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

19 (7) "Legal representative" means a person or persons identified in
20 RCW 7.70.065 who may act on behalf of the resident pursuant to the
21 scope of their legal authority. The legal representative shall not be
22 affiliated with the licensee, assisted living facility, or management
23 company, unless the affiliated person is a family member of the
24 resident.

25 (8) "Nonresident individual" means a person who resides in
26 independent senior housing, independent living units in continuing care
27 retirement communities, or in other similar living environments or in
28 an unlicensed room located within an assisted living facility. Nothing
29 in this chapter prohibits nonresidents from receiving one or more of
30 the services listed in RCW 18.20.030(5) or requires licensure as an
31 assisted living facility when one or more of the services listed in RCW
32 18.20.030(5) are provided to nonresidents. A nonresident individual
33 may not receive domiciliary care, as defined in this chapter, directly
34 or indirectly by the assisted living facility and may not receive the
35 items and services listed in subsection (6) of this section, except
36 during the time the person is receiving adult day services as defined
37 in this section.

1 (9) "Person" means any individual, firm, partnership, corporation,
2 company, association, or joint stock association, and the legal
3 successor thereof.

4 (10) "Resident" means an individual who is not related by blood or
5 marriage to the operator of the assisted living facility, and by reason
6 of age or disability, chooses to reside in the assisted living facility
7 and receives basic services and one or more of the services listed
8 under general responsibility for the safety and well-being of the
9 resident and may receive domiciliary care or respite care provided
10 directly or indirectly by the assisted living facility and shall be
11 permitted to receive hospice care through an outside service provider
12 when arranged by the resident or the resident's legal representative
13 under RCW 18.20.380.

14 (11) "Resident applicant" means an individual who is seeking
15 admission to a licensed assisted living facility and who has completed
16 and signed an application for admission, or such application for
17 admission has been completed and signed in their behalf by their legal
18 representative if any, and if not, then the designated representative
19 if any.

20 (12) "Resident's representative" means a person designated
21 voluntarily by a competent resident, in writing, to act in the
22 resident's behalf concerning the care and services provided by the
23 assisted living facility and to receive information from the assisted
24 living facility, if there is no legal representative. The resident's
25 competence shall be determined using the criteria in RCW
26 11.88.010(1)(e). The resident's representative may not be affiliated
27 with the licensee, assisted living facility, or management company,
28 unless the affiliated person is a family member of the resident. The
29 resident's representative shall not have authority to act on behalf of
30 the resident once the resident is no longer competent.

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

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

34 (1) The department shall adopt, amend, and promulgate such rules,
35 regulations, and standards with respect to all assisted living
36 facilities and operators thereof to be licensed hereunder as may be
37 designed to further the accomplishment of the purposes of this chapter

1 in promoting safe and adequate care of individuals in assisted living
2 facilities and the sanitary, hygienic, and safe conditions of the
3 assisted living facility in the interest of public health, safety, and
4 welfare.

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

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

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

12 (c) Staffing requirements; and

13 (d) Physical plant requirements.

14 NEW SECTION. Sec. 8. A new section is added to chapter 18.20 RCW
15 to read as follows:

16 The legislature finds that the disclosure requirements under
17 section 2(6) of this act is a matter vitally affecting the public
18 interest for the purpose of applying the consumer protection act,
19 chapter 19.86 RCW. A violation of section 2(6) of this act is not
20 reasonable in relation to the development and preservation of business
21 and such a violation is an unfair or deceptive act in trade or commerce
22 and an unfair method of competition for the purpose of applying the
23 consumer protection act, chapter 19.86 RCW.

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