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**SUBSTITUTE SENATE BILL 5028**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Health Care (originally sponsored by Senators Bailey, Dammeier, Cleveland, Keiser, and Warnick)

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

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

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

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

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

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

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

(4) "Continuing nursing services" means the resident has been assessed with a condition or diagnosis that is expected to require the frequent presence and supervision of a licensed registered nurse.

(5) "Department" means the state department of social and health services.

((~~(5)~~)) (6) "Domiciliary care" means: Assistance with activities of daily living provided by the assisted living facility either directly or indirectly; or health support services, if provided directly or indirectly by the assisted living facility; or intermittent nursing services, if provided directly or indirectly by the assisted living facility; or continuing nursing services, if provided directly or indirectly by the assisted living facility.

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

((~~(7)~~)) (8) "Legal representative" means a person or persons identified in RCW 7.70.065 who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, assisted living facility, or management company, unless the affiliated person is a family member of the resident.

((~~(8)~~)) (9) "Nonresident individual" means a person who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in an unlicensed room located within an assisted living facility. Nothing in this chapter prohibits nonresidents from receiving one or more of the services listed in RCW 18.20.030(5) or requires licensure as an assisted living facility when one or more of the services listed in RCW 18.20.030(5) are provided to nonresidents. A nonresident individual may not receive domiciliary care, as defined in this chapter, directly or indirectly by the assisted living facility and may not receive the items and services listed in subsection ((~~(6)~~)) (7) of this section, except during the time the person is receiving adult day services as defined in this section.

((~~(9)~~)) (10) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

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

((~~(11)~~)) (12) "Resident applicant" means an individual who is seeking admission to a licensed assisted living facility and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

((~~(12)~~)) (13) "Resident's representative" means a person designated voluntarily by a competent resident, in writing, to act in the resident's behalf concerning the care and services provided by the assisted living facility and to receive information from the assisted living facility, if there is no legal representative. The resident's competence shall be determined using the criteria in RCW 11.88.010(1)(e). The resident's representative may not be affiliated with the licensee, assisted living facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative shall not have authority to act on behalf of the resident once the resident is no longer competent.

((~~(13)~~)) (14) "Secretary" means the secretary of social and health services.

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

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

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

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

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

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

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

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

(3) If the assisted living facility license has the designation required under section 2 of this act, the facility may provide continuing nursing services, as defined by the department in rule, to meet the needs of residents whose needs could not be met through intermittent nursing services under RCW 18.20.330.

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

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

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

(7) An assisted living facility that chooses to provide continuing nursing services, and has residents whose care is paid for in whole or in part by medicaid, may not use the continuing nursing services designation, or any physical plant alterations or application process necessary for such designation, as a basis for the permanent discharge of any of the facility's current medicaid residents. An assisted living facility that receives an initial continuing nursing services designation may not, for one year following the initial designation, reduce the number of medicaid residents that the facility accepts or retains below the highest number of medicaid residents living at the facility within one year prior to the application for an initial continuing nursing services designation. Any subsequent reduction must be made in accordance with this chapter and chapter 70.129 RCW.

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

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

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

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

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

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

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

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

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

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

(5) An assisted living facility license is not required for one or more of the following services that may, upon the request of the nonresident, be provided to a nonresident individual: (a) Emergency assistance provided on an intermittent or nonroutine basis; (b) systems, including technology-based monitoring devices, employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services; (c) scheduled and nonscheduled blood pressure checks; (d) nursing assessment services to determine whether referral to an outside health care provider is recommended; (e) making and reminding the nonresident of health care appointments; (f) preadmission assessment for the purposes of transitioning to a licensed care setting; (g) medication assistance which may include reminding or coaching the nonresident, opening the nonresident's medication container, using an enabler, and handing prefilled insulin syringes to the nonresident; (h) falls risk assessment; (i) nutrition management and education services; (j) dental services; (k) wellness programs; (l) prefilling insulin syringes when performed by a nurse licensed under chapter 18.79 RCW; or (m) services customarily provided under landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW.

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

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

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

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

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

(c) Staffing requirements; and

(d) Physical plant requirements.

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

((~~No person operating an assisted living facility licensed under this chapter shall admit to or retain in the assisted living facility any aged person requiring nursing or medical care of a type provided by institutions licensed under chapters 18.51, 70.41 or 71.12 RCW, except that when registered nurses are available, and upon a doctor's order that a supervised medication service is needed, it may be provided. Supervised medication services, as defined by the department and consistent with chapters 69.41 and 18.79 RCW, may include an approved program of self-medication or self-directed medication. Such medication service shall be provided only to residents who otherwise meet all requirements for residency in an assisted living facility. No assisted living facility shall admit or retain a person who requires the frequent presence and frequent evaluation of a registered nurse, excluding persons who are receiving hospice care or persons who have a short-term illness that is expected to be resolved within fourteen days.~~)) The assisted living facility licensed under this chapter must assume general responsibility for each resident and must promote each resident's health, safety, and well-being consistent with the resident negotiated care plan. In addition, the assisted living facility may provide assistance with activities of daily living, health support services, intermittent nursing services, and continuing nursing services, as may be further defined by the department in rule, and consistent with the care and services included in the disclosure form required under RCW 18.20.300. To provide continuing nursing services, the licensee shall obtain from the department a designation as required by section 2 of this act. Without first obtaining the required designation on its license, an assisted living facility may not admit or retain a person who requires the frequent presence and frequent evaluation of a licensed registered nurse, except for persons who are receiving hospice care or persons who have a short-term illness that is expected to be resolved within fourteen days. The assisted living facility must assure that sufficient numbers and appropriately qualified and trained staff are available to provide care and services consistent with this chapter.

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

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

(a) Medication administration;

(b) Administration of health care treatments;

(c) Diabetic management;

(d) Nonroutine ostomy care;

(e) Tube feeding; and

(f) Nurse delegation consistent with chapter 18.79 RCW.

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

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

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

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