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**SUBSTITUTE HOUSE BILL 1548**

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**State of Washington                      65th Legislature                      2017 Regular Session**

**By House Health Care & Wellness (originally sponsored by Representatives Schmick and Cody)**

READ FIRST TIME 02/17/17.

1            AN ACT Relating to curricula for persons in long-term care  
2 facilities with behavioral health needs; amending RCW 74.42.360;  
3 reenacting and amending RCW 74.42.010; and adding a new section to  
4 chapter 74.39A RCW.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 74.39A  
7 RCW to read as follows:

8            The department shall adopt rules to establish minimum  
9 competencies and standards for the approval of curricula for  
10 facility-based caregivers serving persons with behavioral health  
11 needs and geriatric behavioral health workers. The curricula must  
12 include at least thirty hours of training specific to the diagnosis,  
13 care, and crisis management of residents with a mental health  
14 disorder, traumatic brain injury, or dementia. The curricula must be  
15 outcome-based, and the effectiveness measured by demonstrated  
16 competency in the core specialty areas through the use of a  
17 competency test.

18            **Sec. 2.** RCW 74.42.010 and 2016 c 131 s 3 are each reenacted and  
19 amended to read as follows:

1 Unless the context clearly requires otherwise, the definitions in  
2 this section apply throughout this chapter.

3 (1) "Department" means the department of social and health  
4 services and the department's employees.

5 (2) "Direct care staff" means the staffing domain identified and  
6 defined in the center for medicare and medicaid service's five-star  
7 quality rating system and as reported through the center for medicare  
8 and medicaid service's payroll-based journal.

9 (3) "Facility" refers to a nursing home as defined in RCW  
10 18.51.010.

11 (4) "Geriatric behavioral health worker" means a person (~~with a~~  
12 ~~bachelor's or master's degree in social work~~) who has received  
13 specialized training devoted to mental illness and treatment of older  
14 adults.

15 (5) "Licensed practical nurse" means a person licensed to  
16 practice practical nursing under chapter 18.79 RCW.

17 (~~(6) ("Licensed practical nurse" means a person licensed to~~  
18 ~~practice practical nursing under chapter 18.79 RCW.~~

19 ~~(7))~~ "Medicaid" means Title XIX of the Social Security Act  
20 enacted by the social security amendments of 1965 (42 U.S.C. Sec.  
21 1396; 79 Stat. 343), as amended.

22 ~~((8))~~ (7) "Nurse practitioner" means a person licensed to  
23 practice advanced registered nursing under chapter 18.79 RCW.

24 ~~((9))~~ (8) "Nursing care" means that care provided by a  
25 registered nurse, an advanced registered nurse practitioner, a  
26 licensed practical nurse, or a nursing assistant in the regular  
27 performance of their duties.

28 ~~((10))~~ (9) "Physician" means a person practicing pursuant to  
29 chapter 18.57 or 18.71 RCW, including, but not limited to, a  
30 physician employed by the facility as provided in chapter 18.51 RCW.

31 ~~((11))~~ (10) "Physician assistant" means a person practicing  
32 pursuant to chapter 18.57A or 18.71A RCW.

33 ~~((12))~~ (11) "Qualified therapist" means:

34 (a) An activities specialist who has specialized education,  
35 training, or experience specified by the department.

36 (b) An audiologist who is eligible for a certificate of clinical  
37 competence in audiology or who has the equivalent education and  
38 clinical experience.

39 (c) A mental health professional as defined in chapter 71.05 RCW.

1 (d) An intellectual disabilities professional who is a qualified  
2 therapist or a therapist approved by the department and has  
3 specialized training or one year experience in treating or working  
4 with persons with intellectual or developmental disabilities.

5 (e) An occupational therapist who is a graduate of a program in  
6 occupational therapy or who has equivalent education or training.

7 (f) A physical therapist as defined in chapter 18.74 RCW.

8 (g) A social worker as defined in RCW 18.320.010(2).

9 (h) A speech pathologist who is eligible for a certificate of  
10 clinical competence in speech pathology or who has equivalent  
11 education and clinical experience.

12 (~~(13)~~) (12) "Registered nurse" means a person licensed to  
13 practice registered nursing under chapter 18.79 RCW.

14 (~~(14)~~) (13) "Resident" means an individual residing in a  
15 nursing home, as defined in RCW 18.51.010.

16 **Sec. 3.** RCW 74.42.360 and 2016 c 131 s 2 are each amended to  
17 read as follows:

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

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

34 (a) The department shall establish in rule a system of compliance  
35 of minimum direct care staffing standards by January 1, 2016.  
36 Oversight must be done at least quarterly using the center for  
37 medicare and medicaid service's payroll-based journal and nursing  
38 home facility census and payroll data.

1 (b) The department shall establish in rule by January 1, 2016, a  
2 system of financial penalties for facilities out of compliance with  
3 minimum staffing standards. No monetary penalty may be issued during  
4 the implementation period of July 1, 2016, through September 30,  
5 2016. If a facility is found noncompliant during the implementation  
6 period, the department shall provide a written notice identifying the  
7 staffing deficiency and require the facility to provide a  
8 sufficiently detailed correction plan to meet the statutory minimum  
9 staffing levels. Monetary penalties begin October 1, 2016. Monetary  
10 penalties must be established based on a formula that calculates the  
11 cost of wages and benefits for the missing staff hours. If a facility  
12 meets the requirements in subsection (3) or (4) of this section, the  
13 penalty amount must be based solely on the wages and benefits of  
14 certified nurse aides. The first monetary penalty for noncompliance  
15 must be at a lower amount than subsequent findings of noncompliance.  
16 Monetary penalties established by the department may not exceed two  
17 hundred percent of the wage and benefit costs that would have  
18 otherwise been expended to achieve the required staffing minimum  
19 (~~(HPRD [hours per resident day])~~) hours per resident day for the  
20 quarter. A facility found out of compliance must be assessed a  
21 monetary penalty at the lowest penalty level if the facility has met  
22 or exceeded the requirements in subsection (2) of this section for  
23 three or more consecutive years. Beginning July 1, 2016, pursuant to  
24 rules established by the department, funds that are received from  
25 financial penalties must be used for technical assistance,  
26 specialized training, or an increase to the quality enhancement  
27 established in RCW 74.46.561.

28 (c) The department shall establish in rule an exception allowing  
29 geriatric behavioral health workers as defined in RCW 74.42.010 to be  
30 recognized in the minimum staffing requirements as part of the direct  
31 care service delivery to individuals suffering from mental illness.  
32 In order to qualify for the exception:

33 (i) The worker must:

34 (A) Have at least three years experience providing care for  
35 individuals with chronic mental health issues, dementia, or  
36 intellectual and developmental disabilities in a long-term care or  
37 behavioral health care setting; or

38 (B) Have successfully completed a facility-based behavioral  
39 health curriculum approved by the department under section 1 of this  
40 act;

1 (ii) The worker must have advanced practice knowledge in aging,  
2 disability, mental illness, Alzheimer's disease, and developmental  
3 disabilities; and

4 (iii) Any geriatric behavioral health worker holding less than a  
5 master's degree in social work must be directly supervised by an  
6 employee who has a master's degree in social work or a registered  
7 nurse.

8 (d)(i) The department shall establish a limited exception to the  
9 3.4 ((HPRD [~~hours per resident day~~])) hours per resident day staffing  
10 requirement for facilities demonstrating a good faith effort to hire  
11 and retain staff.

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

34 (iii) To determine eligibility for exception approval, the  
35 department shall review the plan of correction submitted by the  
36 facility. Before a facility's exception may be renewed, the  
37 department must determine that sufficient progress is being made  
38 towards reaching the 3.4 ((HPRD [~~hours per resident day~~])) hours per  
39 resident day staffing requirement. When reviewing whether to grant or  
40 renew an exception, the department must consider factors including

1 but not limited to: Financial incentives offered by the facilities  
2 such as recruitment bonuses and other incentives; the robustness of  
3 the recruitment process; county employment data; specific steps the  
4 facility has undertaken to improve retention; improvements in the  
5 staffing ratio compared to the baseline established in the surveys  
6 and whether this trend is continuing; and compliance with the process  
7 of submitting staffing data, adherence to the plan of correction, and  
8 any progress toward meeting this plan, as determined by the  
9 department.

10 (iv) Only facilities that have their direct care component rate  
11 increase capped according to RCW 74.46.561 are eligible for exception  
12 consideration. Facilities that will have their direct care component  
13 rate increase capped for one or two years are eligible for exception  
14 consideration through June 30, 2017. Facilities that will have their  
15 direct care component rate increase capped for three years are  
16 eligible for exception consideration through June 30, 2018.

17 (v) The department may not grant or renew a facility's exception  
18 if the facility meets the 3.4 ((HPRD [~~hours per resident day~~])) hours  
19 per resident day staffing requirement and subsequently drops below  
20 the 3.4 ((HPRD [~~hours per resident day~~])) hours per resident day  
21 staffing requirement.

22 (vi) The department may grant exceptions for a six-month period  
23 per exception. The department's authority to grant exceptions to the  
24 3.4 ((HPRD [~~hours per resident day~~])) hours per resident day staffing  
25 requirement expires June 30, 2018.

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

29 (b) The department shall establish a limited exception process to  
30 facilities that can demonstrate a good faith effort to hire a  
31 registered nurse for the last eight hours of required coverage per  
32 day. In granting an exception, the department may consider wages and  
33 benefits offered and the availability of registered nurses in the  
34 particular geographic area. A one-year exception may be granted and  
35 may be renewable for up to three consecutive years; however, the  
36 department may limit the admission of new residents, based on medical  
37 conditions or complexities, when a registered nurse is not on-site  
38 and readily available. If a facility receives an exemption, that  
39 information must be included in the department's nursing home  
40 locator. After June 30, 2019, the department, along with a

1 stakeholder work group established by the department, shall conduct a  
2 review of the exceptions process to determine if it is still  
3 necessary.

4 (4) Essential community providers and small nonessential  
5 community providers must have a registered nurse on duty directly  
6 supervising resident care a minimum of sixteen hours per day, seven  
7 days per week, and a registered nurse or a licensed practical nurse  
8 on duty directly supervising resident care the remaining eight hours  
9 per day, seven days per week.

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