

2SSB 6515 - S AMD 1172

By Senator Van De Wege

PULLED 03/04/2020

1 Strike everything after the enacting clause and insert the
2 following:

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

5 The department shall (~~make or cause to be made at least one~~
6 ~~inspection of~~) inspect each nursing home (~~prior to license renewal~~
7 ~~and shall inspect community-based services as part of the licensing~~
8 ~~renewal survey~~) periodically in accordance with federal standards
9 under 42 C.F.R. Part 488, Subpart E. The inspection shall be made
10 without providing advance notice of it. Every inspection may include
11 an inspection of every part of the premises and an examination of all
12 records, methods of administration, the general and special dietary
13 and the stores and methods of supply. Those nursing homes that
14 provide community-based care shall establish and maintain separate
15 and distinct accounting and other essential records for the purpose
16 of appropriately allocating costs of the providing of such care:
17 PROVIDED, That such costs shall not be considered allowable costs for
18 reimbursement purposes under chapter 74.46 RCW. Following such
19 inspection or inspections, written notice of any violation of this
20 law or the rules and regulations promulgated hereunder, shall be
21 given to the applicant or licensee and the department. The notice
22 shall describe the reasons for the facility's noncompliance. The
23 department may prescribe by regulations that any licensee or
24 applicant desiring to make specified types of alterations or
25 additions to its facilities or to construct new facilities shall,
26 before commencing such alteration, addition or new construction,
27 submit its plans and specifications therefor to the department for
28 preliminary inspection and approval or recommendations with respect
29 to compliance with the regulations and standards herein authorized.

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

1 The department shall, in addition to any inspections conducted
2 pursuant to complaints filed pursuant to RCW 18.51.190, conduct (~~at~~
3 ~~least one general inspection prior to license renewal of all nursing~~
4 ~~homes in the state without providing advance notice of such~~
5 ~~inspection. Periodically, such inspection shall take place in part~~
6 ~~between the hours of 7 p.m. and 5 a.m. or on weekends)) a periodic
7 general inspection of each nursing home in the state without
8 providing advance notice of such inspection. Such inspections must
9 conform to the federal standards for surveys under 42 C.F.R. Part
10 488, Subpart E.~~

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

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

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

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

34 (b) The department shall establish in rule by January 1, 2016, a
35 system of financial penalties for facilities out of compliance with
36 minimum staffing standards. No monetary penalty may be issued during
37 the implementation period of July 1, 2016, through September 30,
38 2016. If a facility is found noncompliant during the implementation
39 period, the department shall provide a written notice identifying the

1 staffing deficiency and require the facility to provide a
2 sufficiently detailed correction plan to meet the statutory minimum
3 staffing levels. Monetary penalties begin October 1, 2016. Monetary
4 penalties must be established based on a formula that calculates the
5 cost of wages and benefits for the missing staff hours. If a facility
6 meets the requirements in subsection (3) or (4) of this section, the
7 penalty amount must be based solely on the wages and benefits of
8 certified nurse aides. The first monetary penalty for noncompliance
9 must be at a lower amount than subsequent findings of noncompliance.
10 Monetary penalties established by the department may not exceed two
11 hundred percent of the wage and benefit costs that would have
12 otherwise been expended to achieve the required staffing minimum
13 hours per resident day for the quarter. A facility found out of
14 compliance must be assessed a monetary penalty at the lowest penalty
15 level if the facility has met or exceeded the requirements in
16 subsection (2) of this section for three or more consecutive years.
17 Beginning July 1, 2016, pursuant to rules established by the
18 department, funds that are received from financial penalties must be
19 used for technical assistance, specialized training, or an increase
20 to the quality enhancement established in RCW 74.46.561.

21 (c) The department shall establish in rule an exception allowing
22 geriatric behavioral health workers as defined in RCW 74.42.010 to be
23 recognized in the minimum staffing requirements as part of the direct
24 care service delivery to individuals who have a behavioral health
25 condition. Hours worked by geriatric behavioral health workers may be
26 recognized as direct care hours for purposes of the minimum staffing
27 requirements only up to a portion of the total hours equal to the
28 proportion of resident days of clients with a behavioral health
29 condition identified at that facility on the most recent semiannual
30 minimum data set. In order to qualify for the exception:

31 (i) The worker must:

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

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

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

5 (d) (i) The department shall establish a limited exception to the
6 3.4 hours per resident day staffing requirement for facilities
7 demonstrating a good faith effort to hire and retain staff.

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

29 (iii) To determine eligibility for exception approval, the
30 department shall review the plan of correction submitted by the
31 facility. Before a facility's exception may be renewed, the
32 department must determine that sufficient progress is being made
33 towards reaching the 3.4 hours per resident day staffing requirement.
34 When reviewing whether to grant or renew an exception, the department
35 must consider factors including but not limited to: Financial
36 incentives offered by the facilities such as recruitment bonuses and
37 other incentives; the robustness of the recruitment process; county
38 employment data; specific steps the facility has undertaken to
39 improve retention; improvements in the staffing ratio compared to the
40 baseline established in the surveys and whether this trend is

1 continuing; and compliance with the process of submitting staffing
2 data, adherence to the plan of correction, and any progress toward
3 meeting this plan, as determined by the department.

4 (iv) Only facilities that have their direct care component rate
5 increase capped according to RCW 74.46.561 are eligible for exception
6 consideration. Facilities that will have their direct care component
7 rate increase capped for one or two years are eligible for exception
8 consideration through June 30, 2017. Facilities that will have their
9 direct care component rate increase capped for three years are
10 eligible for exception consideration through June 30, 2018.

11 (v) The department may not grant or renew a facility's exception
12 if the facility meets the 3.4 hours per resident day staffing
13 requirement and subsequently drops below the 3.4 hours per resident
14 day staffing requirement.

15 (vi) The department may grant exceptions for a six-month period
16 per exception. The department's authority to grant exceptions to the
17 3.4 hours per resident day staffing requirement expires June 30,
18 2018.

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

22 (b)(i) The department shall establish a limited exception process
23 ~~((to facilities))~~ for large nonessential community providers that can
24 demonstrate a good faith effort to hire a registered nurse for the
25 last eight hours of required coverage per day. In granting an
26 exception, the department may consider the competitiveness of the
27 wages and benefits offered as compared to nursing facilities in
28 comparable geographic or metropolitan areas within Washington state,
29 the provider's recruitment and retention efforts, and the
30 availability of registered nurses in the particular geographic area.
31 A one-year exception may be granted and may be renewable ~~((for up to~~
32 ~~three consecutive years))~~; however, the department may limit the
33 admission of new residents, based on medical conditions or
34 complexities, when a registered nurse is not on-site and readily
35 available. If a ~~((facility))~~ large nonessential community provider
36 receives an ~~((exemption))~~ exception, that information must be
37 included in the department's nursing home locator. ~~((After June 30,~~
38 ~~2019))~~

39 (ii) By August 1, 2023, and every three years thereafter, the
40 department, along with a stakeholder work group established by the

1 department, shall conduct a review of the exceptions process to
2 determine if it is still necessary. As part of this review, the
3 department shall provide the legislature with a report that includes
4 enforcement and citation data for large nonessential community
5 providers that were granted an exception in the three previous fiscal
6 years in comparison to those without an exception. The report must
7 include a similar comparison of data, provided to the department by
8 the long-term care ombuds, on long-term care ombuds referrals for
9 large nonessential community providers that were granted an exception
10 in the three previous fiscal years and those without an exception.
11 This report, along with a recommendation as to whether the exceptions
12 process should continue, is due to the legislature by December 1st of
13 each year in which a review is conducted. Based on the
14 recommendations outlined in this report, the legislature may take
15 action to end the exceptions process.

16 (4) Essential community providers and small nonessential
17 community providers must have a registered nurse on duty directly
18 supervising resident care a minimum of sixteen hours per day, seven
19 days per week, and a registered nurse or a licensed practical nurse
20 on duty directly supervising resident care the remaining eight hours
21 per day, seven days per week.

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

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25 On page 1, line 1 of the title, after "facilities;" strike the
26 remainder of the title and insert "and amending RCW 18.51.091,
27 18.51.230, and 74.42.360."

EFFECT: Aligns the Department of Social and Health Services' skilled nursing facility inspection requirements with federal law; removes the three-year renewal limit for 24/7 registered nurse staffing exceptions for large nonessential community providers; requires DSHS and a stakeholder work group to compare the enforcement and citation actions taken against providers that received an exception to those without and to report these comparisons to the Legislature, along with a recommendation as to whether the exception process should continue, by December 1st of each year; removes

requirements related to the rate methodology, including annual rebasing and inflationary adjustments; and removes requirements related to Medicaid bed holds.

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