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**SENATE BILL 5454**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Keiser, Bailey, Van De Wege, and Kuderer

Read first time 01/21/19. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to clarifying the definition of a geriatric  
2 behavioral health worker for individuals with a bachelor's or  
3 master's degree in social work, behavioral health, or other related  
4 areas; and amending RCW 74.42.010 and 74.42.360.

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

6 **Sec. 1.** RCW 74.42.010 and 2017 c 200 s 2 are each amended to  
7 read as follows:

8 Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter.

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

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

16 (3) "Facility" refers to a nursing home as defined in RCW  
17 18.51.010.

18 (4) "Geriatric behavioral health worker" means a person with a  
19 bachelor's or master's degree in social work, behavioral health, or  
20 other related areas, or a person who has received specialized  
21 training devoted to mental illness and treatment of older adults.

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

3 (6) "Medicaid" means Title XIX of the Social Security Act enacted  
4 by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79  
5 Stat. 343), as amended.

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

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

12 (9) "Physician" means a person practicing pursuant to chapter  
13 18.57 or 18.71 RCW, including, but not limited to, a physician  
14 employed by the facility as provided in chapter 18.51 RCW.

15 (10) "Physician assistant" means a person practicing pursuant to  
16 chapter 18.57A or 18.71A RCW.

17 (11) "Qualified therapist" means:

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

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

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

24 (d) An intellectual disabilities professional who is a qualified  
25 therapist or a therapist approved by the department and has  
26 specialized training or one year experience in treating or working  
27 with persons with intellectual or developmental disabilities.

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

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

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

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

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

37 (13) "Resident" means an individual residing in a nursing home,  
38 as defined in RCW 18.51.010.

1       **Sec. 2.** RCW 74.42.360 and 2017 c 200 s 3 are each amended to  
2 read as follows:

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

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

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

24       (b) The department shall establish in rule by January 1, 2016, a  
25 system of financial penalties for facilities out of compliance with  
26 minimum staffing standards. No monetary penalty may be issued during  
27 the implementation period of July 1, 2016, through September 30,  
28 2016. If a facility is found noncompliant during the implementation  
29 period, the department shall provide a written notice identifying the  
30 staffing deficiency and require the facility to provide a  
31 sufficiently detailed correction plan to meet the statutory minimum  
32 staffing levels. Monetary penalties begin October 1, 2016. Monetary  
33 penalties must be established based on a formula that calculates the  
34 cost of wages and benefits for the missing staff hours. If a facility  
35 meets the requirements in subsection (3) or (4) of this section, the  
36 penalty amount must be based solely on the wages and benefits of  
37 certified nurse aides. The first monetary penalty for noncompliance  
38 must be at a lower amount than subsequent findings of noncompliance.  
39 Monetary penalties established by the department may not exceed two  
40 hundred percent of the wage and benefit costs that would have

1 otherwise been expended to achieve the required staffing minimum  
2 hours per resident day for the quarter. A facility found out of  
3 compliance must be assessed a monetary penalty at the lowest penalty  
4 level if the facility has met or exceeded the requirements in  
5 subsection (2) of this section for three or more consecutive years.  
6 Beginning July 1, 2016, pursuant to rules established by the  
7 department, funds that are received from financial penalties must be  
8 used for technical assistance, specialized training, or an increase  
9 to the quality enhancement established in RCW 74.46.561.

10 (c) The department shall establish in rule an exception allowing  
11 geriatric behavioral health workers as defined in RCW 74.42.010 to be  
12 recognized in the minimum staffing requirements as part of the direct  
13 care service delivery to individuals who have a behavioral health  
14 condition. Hours worked by geriatric behavioral health workers may be  
15 recognized as direct care hours for purposes of the minimum staffing  
16 requirements only up to a portion of the total hours equal to the  
17 proportion of resident days of clients with a behavioral health  
18 condition identified at that facility on the most recent semiannual  
19 minimum data set. In order to qualify for the exception:

20 (i) The worker must:

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

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

27 ~~((B))~~ (C) Have successfully completed a facility-based  
28 behavioral health curriculum approved by the department under RCW  
29 74.39A.078;

30 (ii) ~~((The worker must have advanced practice knowledge in aging,~~  
31 ~~disability, mental illness, Alzheimer's disease, and developmental~~  
32 ~~disabilities; and~~

33 ~~((iii))~~ Any geriatric behavioral health worker holding less than  
34 a master's degree in social work must be directly supervised by an  
35 employee who has a master's degree in social work or a registered  
36 nurse.

37 (d) (i) The department shall establish a limited exception to the  
38 3.4 hours per resident day staffing requirement for facilities  
39 demonstrating a good faith effort to hire and retain staff.

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

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

37 (iv) Only facilities that have their direct care component rate  
38 increase capped according to RCW 74.46.561 are eligible for exception  
39 consideration. Facilities that will have their direct care component  
40 rate increase capped for one or two years are eligible for exception

1 consideration through June 30, 2017. Facilities that will have their  
2 direct care component rate increase capped for three years are  
3 eligible for exception consideration through June 30, 2018.

4 (v) The department may not grant or renew a facility's exception  
5 if the facility meets the 3.4 hours per resident day staffing  
6 requirement and subsequently drops below the 3.4 hours per resident  
7 day staffing requirement.

8 (vi) The department may grant exceptions for a six-month period  
9 per exception. The department's authority to grant exceptions to the  
10 3.4 hours per resident day staffing requirement expires June 30,  
11 2018.

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

15 (b) The department shall establish a limited exception process to  
16 facilities that can demonstrate a good faith effort to hire a  
17 registered nurse for the last eight hours of required coverage per  
18 day. In granting an exception, the department may consider wages and  
19 benefits offered and the availability of registered nurses in the  
20 particular geographic area. A one-year exception may be granted and  
21 may be renewable for up to three consecutive years; however, the  
22 department may limit the admission of new residents, based on medical  
23 conditions or complexities, when a registered nurse is not on-site  
24 and readily available. If a facility receives an exemption, that  
25 information must be included in the department's nursing home  
26 locator. After June 30, 2019, the department, along with a  
27 stakeholder work group established by the department, shall conduct a  
28 review of the exceptions process to determine if it is still  
29 necessary.

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

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

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