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SENATE BILL 5028

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State of Washington                      64th Legislature                      2015 Regular Session

By Senators Bailey, Dammeier, Cleveland, and Keiser

Prefiled 12/26/14.

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

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

7            **Sec. 1.** RCW 18.20.020 and 2012 c 10 s 2 are each reenacted and  
8 amended to read as follows:

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

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

15            (2) "Assisted living facility" means any home or other  
16 institution, however named, which is advertised, announced, or  
17 maintained for the express or implied purpose of providing housing,  
18 basic services, and assuming general responsibility for the safety  
19 and well-being of the residents, and may also provide domiciliary  
20 care, consistent with chapter 142, Laws of 2004, to seven or more  
21 residents after July 1, 2000. However, an assisted living facility

1 that is licensed for three to six residents prior to or on July 1,  
2 2000, may maintain its assisted living facility license as long as it  
3 is continually licensed as an assisted living facility. "Assisted  
4 living facility" shall not include facilities certified as group  
5 training homes pursuant to RCW 71A.22.040, nor any home, institution  
6 or section thereof which is otherwise licensed and regulated under  
7 the provisions of state law providing specifically for the licensing  
8 and regulation of such home, institution or section thereof. Nor  
9 shall it include any independent senior housing, independent living  
10 units in continuing care retirement communities, or other similar  
11 living situations including those subsidized by the department of  
12 housing and urban development.

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

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

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

20 (~~(+5)~~) (6) "Domiciliary care" means: Assistance with activities  
21 of daily living provided by the assisted living facility either  
22 directly or indirectly; or health support services, if provided  
23 directly or indirectly by the assisted living facility; or  
24 intermittent nursing services, if provided directly or indirectly by  
25 the assisted living facility; or continuing nursing services, if  
26 provided directly or indirectly by the assisted living facility.

27 (~~(+6)~~) (7) "General responsibility for the safety and well-being  
28 of the resident" means the provision of the following: Prescribed  
29 general low sodium diets; prescribed general diabetic diets;  
30 prescribed mechanical soft foods; emergency assistance; monitoring of  
31 the resident; arranging health care appointments with outside health  
32 care providers and reminding residents of such appointments as  
33 necessary; coordinating health care services with outside health care  
34 providers consistent with RCW 18.20.380; assisting the resident to  
35 obtain and maintain glasses, hearing aids, dentures, canes, crutches,  
36 walkers, wheelchairs, and assistive communication devices;  
37 observation of the resident for changes in overall functioning; blood  
38 pressure checks as scheduled; responding appropriately when there are  
39 observable or reported changes in the resident's physical, mental, or

1 emotional functioning; or medication assistance as permitted under  
2 RCW 69.41.085 and as defined in RCW 69.41.010.

3 ~~((7))~~ (8) "Legal representative" means a person or persons  
4 identified in RCW 7.70.065 who may act on behalf of the resident  
5 pursuant to the scope of their legal authority. The legal  
6 representative shall not be affiliated with the licensee, assisted  
7 living facility, or management company, unless the affiliated person  
8 is a family member of the resident.

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

22 ~~((9))~~ (10) "Person" means any individual, firm, partnership,  
23 corporation, company, association, or joint stock association, and  
24 the legal successor thereof.

25 ~~((10))~~ (11) "Resident" means an individual who is not related  
26 by blood or marriage to the operator of the assisted living facility,  
27 and by reason of age or disability, chooses to reside in the assisted  
28 living facility and receives basic services and one or more of the  
29 services listed under general responsibility for the safety and well-  
30 being of the resident and may receive domiciliary care or respite  
31 care provided directly or indirectly by the assisted living facility  
32 and shall be permitted to receive hospice care through an outside  
33 service provider when arranged by the resident or the resident's  
34 legal representative under RCW 18.20.380.

35 ~~((11))~~ (12) "Resident applicant" means an individual who is  
36 seeking admission to a licensed assisted living facility and who has  
37 completed and signed an application for admission, or such  
38 application for admission has been completed and signed in their  
39 behalf by their legal representative if any, and if not, then the  
40 designated representative if any.

1       (~~(12)~~)   (13) "Resident's representative" means a person  
2 designated voluntarily by a competent resident, in writing, to act in  
3 the resident's behalf concerning the care and services provided by  
4 the assisted living facility and to receive information from the  
5 assisted living facility, if there is no legal representative. The  
6 resident's competence shall be determined using the criteria in RCW  
7 11.88.010(1)(e). The resident's representative may not be affiliated  
8 with the licensee, assisted living facility, or management company,  
9 unless the affiliated person is a family member of the resident. The  
10 resident's representative shall not have authority to act on behalf  
11 of the resident once the resident is no longer competent.

12       (~~(13)~~)   (14) "Secretary" means the secretary of social and  
13 health services.

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

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

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

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

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

36       NEW SECTION.   **Sec. 3.** A new section is added to chapter 18.20  
37 RCW to read as follows:

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

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

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

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

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

31 (6) If an assisted living facility with a continuing nursing  
32 services designation determines, or has reason to believe, that a  
33 resident needs continuing nursing services or rehabilitative therapy  
34 services, then the facility must provide the resident, the resident's  
35 legal representative, if any, and, if not, the resident  
36 representative, with a department-approved written notice informing  
37 the client that he or she may be eligible for complete or partial  
38 coverage of those services through medicare, medicaid, veterans'  
39 benefits, long-term care insurance, or other benefit programs. The  
40 department shall develop the written notice with input from

1 stakeholders. The notice must inform residents of possible coverage  
2 under the benefit programs at reduced fee or no cost to the resident,  
3 and provide contact information for those programs. The notice must  
4 be signed and dated by the resident, or his or her representative if  
5 the resident lacks capacity. The facility must retain a copy of the  
6 signed notice. If the resident chooses to use his or her benefits  
7 under medicare, medicaid, veterans' benefits, long-term care  
8 insurance, or other programs, the resident may elect to receive the  
9 nursing or rehabilitative therapy services offered through an outside  
10 health care provider under RCW 18.20.380, or from the assisted living  
11 facility if the facility is an authorized provider under the relevant  
12 benefit program. An assisted living facility that fails to give the  
13 notice required under this subsection and charges residents privately  
14 for the provision of continuing nursing or rehabilitative services  
15 and such services were otherwise eligible for medicare, veterans'  
16 benefits, long-term care insurance, or other third-party coverage,  
17 commits an act that constitutes financial exploitation under chapter  
18 74.34 RCW.

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

32 **Sec. 4.** RCW 18.20.030 and 2012 c 10 s 3 are each amended to read  
33 as follows:

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

37 (2) An assisted living facility license is not required for the  
38 housing, or services, that are customarily provided under landlord  
39 tenant agreements governed by the residential landlord-tenant act,

1 chapter 59.18 RCW, or when housing nonresident individuals who chose  
2 to participate in programs or services under subsection (5) of this  
3 section, when offered by the assisted living facility licensee or the  
4 licensee's contractor. This subsection does not prohibit the licensee  
5 from furnishing written information concerning available community  
6 resources to the nonresident individual or the individual's family  
7 members or legal representatives. The licensee may not require the  
8 use of any particular service provider.

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

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

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

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

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

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

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

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

1 management and education services; (j) dental services; (k) wellness  
2 programs; (l) prefilling insulin syringes when performed by a nurse  
3 licensed under chapter 18.79 RCW; or (m) services customarily  
4 provided under landlord tenant agreements governed by the residential  
5 landlord-tenant act, chapter 59.18 RCW.

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

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

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

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

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

25 (c) Staffing requirements; and

26 (d) Physical plant requirements.

27 **Sec. 6.** RCW 18.20.160 and 2012 c 10 s 11 are each amended to  
28 read as follows:

29 ~~((No person operating an assisted living facility licensed under~~  
30 ~~this chapter shall admit to or retain in the assisted living facility~~  
31 ~~any aged person requiring nursing or medical care of a type provided~~  
32 ~~by institutions licensed under chapters 18.51, 70.41 or 71.12 RCW,~~  
33 ~~except that when registered nurses are available, and upon a doctor's~~  
34 ~~order that a supervised medication service is needed, it may be~~  
35 ~~provided. Supervised medication services, as defined by the~~  
36 ~~department and consistent with chapters 69.41 and 18.79 RCW, may~~  
37 ~~include an approved program of self-medication or self-directed~~  
38 ~~medication. Such medication service shall be provided only to~~



1 residents who otherwise meet all requirements for residency in an  
2 assisted living facility. No assisted living facility shall admit or  
3 retain a person who requires the frequent presence and frequent  
4 evaluation of a registered nurse, excluding persons who are receiving  
5 hospice care or persons who have a short-term illness that is  
6 expected to be resolved within fourteen days.) The assisted living  
7 facility licensed under this chapter must assume general  
8 responsibility for each resident and must promote each resident's  
9 health, safety, and well-being consistent with the resident  
10 negotiated care plan. In addition, the assisted living facility may  
11 provide assistance with activities of daily living, health support  
12 services, intermittent nursing services, and continuing nursing  
13 services, as may be further defined by the department in rule, and  
14 consistent with the care and services included in the disclosure form  
15 required under RCW 18.20.300. To provide continuing nursing services,  
16 the licensee shall obtain from the department a designation as  
17 required by section 2 of this act. Without first obtaining the  
18 required designation on its license, an assisted living facility may  
19 not admit or retain a person who requires the frequent presence and  
20 frequent evaluation of a licensed registered nurse, except for  
21 persons who are receiving hospice care or persons who have a short-  
22 term illness that is expected to be resolved within fourteen days.  
23 The assisted living facility must assure that sufficient numbers and  
24 appropriately qualified and trained staff are available to provide  
25 care and services consistent with this chapter.

26 **Sec. 7.** RCW 18.20.330 and 2012 c 10 s 22 are each amended to  
27 read as follows:

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

- 35 (a) Medication administration;  
36 (b) Administration of health care treatments;  
37 (c) Diabetic management;  
38 (d) Nonroutine ostomy care;  
39 (e) Tube feeding; and

1 (f) Nurse delegation consistent with chapter 18.79 RCW.

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

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

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

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