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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1727

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State of Washington

63rd Legislature

2013 Regular Session

By House Appropriations (originally sponsored by Representatives Morrell, Green, Walsh, Ryu, Appleton, Tharinger, and Pollet)

READ FIRST TIME 03/01/13.

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

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

7 **Sec. 1.** RCW 18.20.330 and 2012 c 10 s 22 are each amended to read  
8 as follows:

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

- 16 (a) Medication administration;  
17 (b) Administration of health care treatments;  
18 (c) Diabetic management;  
19 (d) Nonroutine ostomy care;

1 (e) Tube feeding; and

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

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

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

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

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

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

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

32 (3) If the assisted living facility license has the designation  
33 required under section 4 of this act, the facility may provide  
34 continuing nursing services, as defined by the department in rule, to  
35 meet the needs of residents whose needs could not be met through  
36 intermittent nursing services under RCW 18.20.330.

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

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

10 (6) If an assisted living facility with a continuing nursing  
11 services designation determines, or has reason to believe, that a  
12 resident needs continuing nursing services or rehabilitative therapy  
13 services, then the facility must provide the resident, the resident's  
14 legal representative, if any, and, if not, the resident representative,  
15 with a department-approved written notice informing the client that he  
16 or she may be eligible for complete or partial coverage of those  
17 services through medicare, medicaid, veterans' benefits, long-term care  
18 insurance, or other benefit programs. The department shall develop the  
19 written notice with input from stakeholders. The notice must inform  
20 residents of possible coverage under the benefit programs at reduced  
21 fee or no cost to the resident, and provide contact information for  
22 those programs. The notice must be signed and dated by the resident,  
23 or his or her representative if the resident lacks capacity. The  
24 facility must retain a copy of the signed notice. If the resident  
25 chooses to use his or her benefits under medicare, medicaid, veterans'  
26 benefits, long-term care insurance, or other programs, the resident may  
27 elect to receive the nursing or rehabilitative therapy services offered  
28 through an outside health care provider under RCW 18.20.380, or from  
29 the assisted living facility if the facility is an authorized provider  
30 under the relevant benefit program.

31 (7) An assisted living facility that chooses to provide continuing  
32 nursing services, and has residents whose care is paid for in whole or  
33 in part by medicaid, may not use the continuing nursing services  
34 designation, or any physical plant alterations or application process  
35 necessary for such designation, as a basis for the permanent discharge  
36 of any of the facility's current medicaid residents. An assisted  
37 living facility that receives an initial continuing nursing services  
38 designation may not, for one year following the initial designation,

1 reduce the number of medicaid residents that the facility accepts or  
2 retains below the highest number of medicaid residents living at the  
3 facility within one year prior to the application for an initial  
4 continuing nursing services designation.

5 **Sec. 3.** RCW 18.20.160 and 2012 c 10 s 11 are each amended to read  
6 as follows:

7 ~~((No person operating an assisted living facility licensed under  
8 this chapter shall admit to or retain in the assisted living facility  
9 any aged person requiring nursing or medical care of a type provided by  
10 institutions licensed under chapters 18.51, 70.41 or 71.12 RCW, except  
11 that when registered nurses are available, and upon a doctor's order  
12 that a supervised medication service is needed, it may be provided.  
13 Supervised medication services, as defined by the department and  
14 consistent with chapters 69.41 and 18.79 RCW, may include an approved  
15 program of self-medication or self-directed medication. Such  
16 medication service shall be provided only to residents who otherwise  
17 meet all requirements for residency in an assisted living facility. No  
18 assisted living facility shall admit or retain a person who requires  
19 the frequent presence and frequent evaluation of a registered nurse,  
20 excluding persons who are receiving hospice care or persons who have a  
21 short term illness that is expected to be resolved within fourteen  
22 days.)) The assisted living facility licensed under this chapter must  
23 assume general responsibility for each resident and must promote each  
24 resident's health, safety, and well-being consistent with the resident  
25 negotiated care plan. In addition, the assisted living facility may  
26 provide assistance with activities of daily living, health support  
27 services, intermittent nursing services, and continuing nursing  
28 services, as may be further defined by the department in rule, and  
29 consistent with the care and services included in the disclosure form  
30 required under RCW 18.20.300. To provide continuing nursing services,  
31 the licensee shall obtain from the department a designation as required  
32 by section 4 of this act. Without first obtaining the required  
33 designation on its license, an assisted living facility may not admit  
34 or retain a person who requires the frequent presence and frequent  
35 evaluation of a licensed registered nurse, except for persons who are  
36 receiving hospice care or persons who have a short-term illness that is  
37 expected to be resolved within fourteen days. The assisted living~~

1 facility must assure that sufficient numbers and appropriately  
2 qualified and trained staff are available to provide care and services  
3 consistent with this chapter.

4 **NEW SECTION. Sec. 4.** A new section is added to chapter 18.20 RCW  
5 to read as follows:

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

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

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

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

25 (5) For the purposes of this section, "continuing nursing services"  
26 means the resident has been assessed with a condition or diagnosis that  
27 is expected to require the frequent presence and supervision of a  
28 licensed registered nurse.

29 **Sec. 5.** RCW 18.20.030 and 2012 c 10 s 3 are each amended to read  
30 as follows:

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

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

1 chapter 59.18 RCW, or when housing nonresident individuals who chose to  
2 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 use  
8 of any particular service provider.

9 (3) Residents receiving domiciliary care, directly or indirectly by  
10 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 person  
13 other than an outside service provider, under RCW 18.20.380, or family  
14 member:

15 (a) Assumes general responsibility for the safety and well-being of  
16 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 or  
26 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) preadmission  
36 assessment for the purposes of transitioning to a licensed care  
37 setting; (g) medication assistance which may include reminding or  
38 coaching the nonresident, opening the nonresident's medication

1 container, using an enabler, and handing prefilled insulin syringes to  
2 the nonresident; (h) falls risk assessment; (i) nutrition management  
3 and education services; (j) dental services; (k) wellness programs; (l)  
4 prefilling insulin syringes when performed by a nurse licensed under  
5 chapter 18.79 RCW; or (m) services customarily provided under landlord  
6 tenant agreements governed by the residential landlord-tenant act,  
7 chapter 59.18 RCW.

8 **Sec. 6.** RCW 18.20.020 and 2012 c 10 s 2 are each reenacted and  
9 amended to read as follows:

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

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

16 (2) "Assisted living facility" means any home or other institution,  
17 however named, which is advertised, announced, or maintained for the  
18 express or implied purpose of providing housing, basic services, and  
19 assuming general responsibility for the safety and well-being of the  
20 residents, and may also provide domiciliary care, consistent with  
21 chapter 142, Laws of 2004, to seven or more residents after July 1,  
22 2000. However, an assisted living facility that is licensed for three  
23 to six residents prior to or on July 1, 2000, may maintain its assisted  
24 living facility license as long as it is continually licensed as an  
25 assisted living facility. "Assisted living facility" shall not include  
26 facilities certified as group training homes pursuant to RCW  
27 71A.22.040, nor any home, institution or section thereof which is  
28 otherwise licensed and regulated under the provisions of state law  
29 providing specifically for the licensing and regulation of such home,  
30 institution or section thereof. Nor shall it include any independent  
31 senior housing, independent living units in continuing care retirement  
32 communities, or other similar living situations including those  
33 subsidized by the department of housing and urban development.

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

36 (4) "Department" means the state department of social and health  
37 services.

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

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

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

29 (8) "Nonresident individual" means a person who resides in  
30 independent senior housing, independent living units in continuing care  
31 retirement communities, or in other similar living environments or in  
32 an unlicensed room located within an assisted living facility. Nothing  
33 in this chapter prohibits nonresidents from receiving one or more of  
34 the services listed in RCW 18.20.030(5) or requires licensure as an  
35 assisted living facility when one or more of the services listed in RCW  
36 18.20.030(5) are provided to nonresidents. A nonresident individual  
37 may not receive domiciliary care, as defined in this chapter, directly  
38 or indirectly by the assisted living facility and may not receive the



1 items and services listed in subsection (6) of this section, except  
2 during the time the person is receiving adult day services as defined  
3 in this section.

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

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

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

23 (12) "Resident's representative" means a person designated  
24 voluntarily by a competent resident, in writing, to act in the  
25 resident's behalf concerning the care and services provided by the  
26 assisted living facility and to receive information from the assisted  
27 living facility, if there is no legal representative. The resident's  
28 competence shall be determined using the criteria in RCW  
29 11.88.010(1)(e). The resident's representative may not be affiliated  
30 with the licensee, assisted living facility, or management company,  
31 unless the affiliated person is a family member of the resident. The  
32 resident's representative shall not have authority to act on behalf of  
33 the resident once the resident is no longer competent.

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

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

37 (1) The department shall adopt, amend, and promulgate such rules,

1 regulations, and standards with respect to all assisted living  
2 facilities and operators thereof to be licensed hereunder as may be  
3 designed to further the accomplishment of the purposes of this chapter  
4 in promoting safe and adequate care of individuals in assisted living  
5 facilities and the sanitary, hygienic, and safe conditions of the  
6 assisted living facility in the interest of public health, safety, and  
7 welfare.

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

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

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

15 (c) Staffing requirements; and

16 (d) Physical plant requirements.

17 NEW SECTION. Sec. 8. A new section is added to chapter 18.20 RCW  
18 to read as follows:

19 The legislature finds that the disclosure requirements under  
20 section 2(6) of this act which prevent unnecessary payments to assisted  
21 living facilities for nursing or rehabilitative therapy services that  
22 may be available through other coverage programs is a matter vitally  
23 affecting the public interest for the purpose of applying the consumer  
24 protection act, chapter 19.86 RCW. A violation by an assisted living  
25 facility of section 2(6) of this act by failing to give notice to a  
26 resident and charging the resident for the provision of nursing or  
27 rehabilitative services is not reasonable in relation to the  
28 development and preservation of business and such a violation is an  
29 unfair or deceptive act in trade or commerce and an unfair method of  
30 competition for the purpose of applying the consumer protection act,  
31 chapter 19.86 RCW.

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