
SENATE BILL 5454

State of Washington

66th Legislature

2019 Regular Session

By Senators Keiser, Bailey, and Van De Wege

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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