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ENGROSSED SUBSTITUTE HOUSE BILL 1548

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State of Washington                      65th Legislature                      2017 Regular Session

By House Health Care & Wellness (originally sponsored by  
Representatives Schmick and Cody)

READ FIRST TIME 02/17/17.

1            AN ACT Relating to curricula for persons in long-term care  
2 facilities with behavioral health needs; amending RCW 74.42.360;  
3 reenacting and amending RCW 74.42.010; and adding a new section to  
4 chapter 74.39A RCW.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 74.39A  
7 RCW to read as follows:

8            The department shall adopt rules to establish minimum  
9 competencies and standards for the approval of curricula for  
10 facility-based caregivers serving persons with behavioral health  
11 needs and geriatric behavioral health workers. The curricula must  
12 include at least thirty hours of training specific to the diagnosis,  
13 care, and crisis management of residents with a mental health  
14 disorder, traumatic brain injury, or dementia. The curricula must be  
15 outcome-based, and the effectiveness measured by demonstrated  
16 competency in the core specialty areas through the use of a  
17 competency test.

18            **Sec. 2.** RCW 74.42.010 and 2016 c 131 s 3 are each reenacted and  
19 amended to read as follows:

1 Unless the context clearly requires otherwise, the definitions in  
2 this section apply throughout this chapter.

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

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

9 (3) "Facility" refers to a nursing home as defined in RCW  
10 18.51.010.

11 (4) "Geriatric behavioral health worker" means a person (~~with a~~  
12 ~~bachelor's or master's degree in social work~~) who has received  
13 specialized training devoted to mental illness and treatment of older  
14 adults.

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

17 (~~(6) ("Licensed practical nurse" means a person licensed to~~  
18 ~~practice practical nursing under chapter 18.79 RCW.~~

19 ~~(7))~~ "Medicaid" means Title XIX of the Social Security Act  
20 enacted by the social security amendments of 1965 (42 U.S.C. Sec.  
21 1396; 79 Stat. 343), as amended.

22 ~~((8))~~ (7) "Nurse practitioner" means a person licensed to  
23 practice advanced registered nursing under chapter 18.79 RCW.

24 ~~((9))~~ (8) "Nursing care" means that care provided by a  
25 registered nurse, an advanced registered nurse practitioner, a  
26 licensed practical nurse, or a nursing assistant in the regular  
27 performance of their duties.

28 ~~((10))~~ (9) "Physician" means a person practicing pursuant to  
29 chapter 18.57 or 18.71 RCW, including, but not limited to, a  
30 physician employed by the facility as provided in chapter 18.51 RCW.

31 ~~((11))~~ (10) "Physician assistant" means a person practicing  
32 pursuant to chapter 18.57A or 18.71A RCW.

33 ~~((12))~~ (11) "Qualified therapist" means:

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

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

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

1 (d) An intellectual disabilities professional who is a qualified  
2 therapist or a therapist approved by the department and has  
3 specialized training or one year experience in treating or working  
4 with persons with intellectual or developmental disabilities.

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

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

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

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

12 (~~(13)~~) (12) "Registered nurse" means a person licensed to  
13 practice registered nursing under chapter 18.79 RCW.

14 (~~(14)~~) (13) "Resident" means an individual residing in a  
15 nursing home, as defined in RCW 18.51.010.

16 **Sec. 3.** RCW 74.42.360 and 2016 c 131 s 2 are each amended to  
17 read as follows:

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

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

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

1 (b) The department shall establish in rule by January 1, 2016, a  
2 system of financial penalties for facilities out of compliance with  
3 minimum staffing standards. No monetary penalty may be issued during  
4 the implementation period of July 1, 2016, through September 30,  
5 2016. If a facility is found noncompliant during the implementation  
6 period, the department shall provide a written notice identifying the  
7 staffing deficiency and require the facility to provide a  
8 sufficiently detailed correction plan to meet the statutory minimum  
9 staffing levels. Monetary penalties begin October 1, 2016. Monetary  
10 penalties must be established based on a formula that calculates the  
11 cost of wages and benefits for the missing staff hours. If a facility  
12 meets the requirements in subsection (3) or (4) of this section, the  
13 penalty amount must be based solely on the wages and benefits of  
14 certified nurse aides. The first monetary penalty for noncompliance  
15 must be at a lower amount than subsequent findings of noncompliance.  
16 Monetary penalties established by the department may not exceed two  
17 hundred percent of the wage and benefit costs that would have  
18 otherwise been expended to achieve the required staffing minimum  
19 (~~(HPRD [hours per resident day])~~) hours per resident day for the  
20 quarter. A facility found out of compliance must be assessed a  
21 monetary penalty at the lowest penalty level if the facility has met  
22 or exceeded the requirements in subsection (2) of this section for  
23 three or more consecutive years. Beginning July 1, 2016, pursuant to  
24 rules established by the department, funds that are received from  
25 financial penalties must be used for technical assistance,  
26 specialized training, or an increase to the quality enhancement  
27 established in RCW 74.46.561.

28 (c) The department shall establish in rule an exception allowing  
29 geriatric behavioral health workers as defined in RCW 74.42.010 to be  
30 recognized in the minimum staffing requirements as part of the direct  
31 care service delivery to individuals (~~(suffering from mental~~  
32 ~~illness))~~ who have a behavioral health condition. Hours worked by  
33 geriatric behavioral health workers may be recognized as direct care  
34 hours for purposes of the minimum staffing requirements only up to a  
35 portion of the total hours equal to the proportion of resident days  
36 of clients with a behavioral health condition identified at that  
37 facility on the most recent semiannual minimum data set. In order to  
38 qualify for the exception:

39 (i) The worker must:

1       (A) Have at least three years experience providing care for  
2 individuals with chronic mental health issues, dementia, or  
3 intellectual and developmental disabilities in a long-term care or  
4 behavioral health care setting; or

5       (B) Have successfully completed a facility-based behavioral  
6 health curriculum approved by the department under section 1 of this  
7 act;

8       (ii) The worker must have advanced practice knowledge in aging,  
9 disability, mental illness, Alzheimer's disease, and developmental  
10 disabilities; and

11       (iii) Any geriatric behavioral health worker holding less than a  
12 master's degree in social work must be directly supervised by an  
13 employee who has a master's degree in social work or a registered  
14 nurse.

15       (d)(i) The department shall establish a limited exception to the  
16 3.4 ((HPRD [~~hours per resident day~~])) hours per resident day staffing  
17 requirement for facilities demonstrating a good faith effort to hire  
18 and retain staff.

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

1 (iii) To determine eligibility for exception approval, the  
2 department shall review the plan of correction submitted by the  
3 facility. Before a facility's exception may be renewed, the  
4 department must determine that sufficient progress is being made  
5 towards reaching the 3.4 (~~(HPRD [hours per resident day])~~) hours per  
6 resident day staffing requirement. When reviewing whether to grant or  
7 renew an exception, the department must consider factors including  
8 but not limited to: Financial incentives offered by the facilities  
9 such as recruitment bonuses and other incentives; the robustness of  
10 the recruitment process; county employment data; specific steps the  
11 facility has undertaken to improve retention; improvements in the  
12 staffing ratio compared to the baseline established in the surveys  
13 and whether this trend is continuing; and compliance with the process  
14 of submitting staffing data, adherence to the plan of correction, and  
15 any progress toward meeting this plan, as determined by the  
16 department.

17 (iv) Only facilities that have their direct care component rate  
18 increase capped according to RCW 74.46.561 are eligible for exception  
19 consideration. Facilities that will have their direct care component  
20 rate increase capped for one or two years are eligible for exception  
21 consideration through June 30, 2017. Facilities that will have their  
22 direct care component rate increase capped for three years are  
23 eligible for exception consideration through June 30, 2018.

24 (v) The department may not grant or renew a facility's exception  
25 if the facility meets the 3.4 (~~(HPRD [hours per resident day])~~) hours  
26 per resident day staffing requirement and subsequently drops below  
27 the 3.4 (~~(HPRD [hours per resident day])~~) hours per resident day  
28 staffing requirement.

29 (vi) The department may grant exceptions for a six-month period  
30 per exception. The department's authority to grant exceptions to the  
31 3.4 (~~(HPRD [hours per resident day])~~) hours per resident day staffing  
32 requirement expires June 30, 2018.

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

36 (b) The department shall establish a limited exception process to  
37 facilities that can demonstrate a good faith effort to hire a  
38 registered nurse for the last eight hours of required coverage per  
39 day. In granting an exception, the department may consider wages and  
40 benefits offered and the availability of registered nurses in the

1 particular geographic area. A one-year exception may be granted and  
2 may be renewable for up to three consecutive years; however, the  
3 department may limit the admission of new residents, based on medical  
4 conditions or complexities, when a registered nurse is not on-site  
5 and readily available. If a facility receives an exemption, that  
6 information must be included in the department's nursing home  
7 locator. After June 30, 2019, the department, along with a  
8 stakeholder work group established by the department, shall conduct a  
9 review of the exceptions process to determine if it is still  
10 necessary.

11 (4) Essential community providers and small nonessential  
12 community providers must have a registered nurse on duty directly  
13 supervising resident care a minimum of sixteen hours per day, seven  
14 days per week, and a registered nurse or a licensed practical nurse  
15 on duty directly supervising resident care the remaining eight hours  
16 per day, seven days per week.

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

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