

SSB 5028 - H COMM AMD

By Committee on Health Care & Wellness

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 18.20.020 and 2012 c 10 s 2 are each reenacted and  
4 amended to read as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

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

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

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

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

1        (5) "Department" means the state department of social and health  
2 services.

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

10        ~~((+6))~~ (7) "General responsibility for the safety and well-being  
11 of the resident" means the provision of the following: Prescribed  
12 general low sodium diets; prescribed general diabetic diets;  
13 prescribed mechanical soft foods; emergency assistance; monitoring of  
14 the resident; arranging health care appointments with outside health  
15 care providers and reminding residents of such appointments as  
16 necessary; coordinating health care services with outside health care  
17 providers consistent with RCW 18.20.380; assisting the resident to  
18 obtain and maintain glasses, hearing aids, dentures, canes, crutches,  
19 walkers, wheelchairs, and assistive communication devices;  
20 observation of the resident for changes in overall functioning; blood  
21 pressure checks as scheduled; responding appropriately when there are  
22 observable or reported changes in the resident's physical, mental, or  
23 emotional functioning; or medication assistance as permitted under  
24 RCW 69.41.085 and as defined in RCW 69.41.010.

25        ~~((+7))~~ (8) "Legal representative" means a person or persons  
26 identified in RCW 7.70.065 who may act on behalf of the resident  
27 pursuant to the scope of their legal authority. The legal  
28 representative shall not be affiliated with the licensee, assisted  
29 living facility, or management company, unless the affiliated person  
30 is a family member of the resident.

31        ~~((+8))~~ (9) "Nonresident individual" means a person who resides  
32 in independent senior housing, independent living units in continuing  
33 care retirement communities, or in other similar living environments  
34 or in an unlicensed room located within an assisted living facility.  
35 Nothing in this chapter prohibits nonresidents from receiving one or  
36 more of the services listed in RCW 18.20.030(5) or requires licensure  
37 as an assisted living facility when one or more of the services  
38 listed in RCW 18.20.030(5) are provided to nonresidents. A  
39 nonresident individual may not receive domiciliary care, as defined  
40 in this chapter, directly or indirectly by the assisted living

1 facility and may not receive the items and services listed in  
2 subsection ~~((6))~~ (7) of this section, except during the time the  
3 person is receiving adult day services as defined in this section.

4 ~~((9))~~ (10) "Person" means any individual, firm, partnership,  
5 corporation, company, association, or joint stock association, and  
6 the legal successor thereof.

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

17 ~~((11))~~ (12) "Resident applicant" means an individual who is  
18 seeking admission to a licensed assisted living facility and who has  
19 completed and signed an application for admission, or such  
20 application for admission has been completed and signed in their  
21 behalf by their legal representative if any, and if not, then the  
22 designated representative if any.

23 ~~((12))~~ (13) "Resident's representative" means a person  
24 designated voluntarily by a competent resident, in writing, to act in  
25 the resident's behalf concerning the care and services provided by  
26 the assisted living facility and to receive information from the  
27 assisted living facility, if there is no legal representative. The  
28 resident's 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  
33 of the resident once the resident is no longer competent.

34 ~~((13))~~ (14) "Secretary" means the secretary of social and  
35 health services.

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

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

4 (2) At least sixty days prior to the anticipated designation to  
5 provide continuing nursing services, the applicant must submit to the  
6 department a completed application on a form developed by the  
7 department.

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

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

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

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

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

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

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

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

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

1 commits an act that constitutes financial exploitation under chapter  
2 74.34 RCW.

3 (7) An assisted living facility that chooses to provide  
4 continuing nursing services, and has residents whose care is paid for  
5 in whole or in part by medicaid, may not use the continuing nursing  
6 services designation, or any physical plant alterations or  
7 application process necessary for such designation, as a basis for  
8 the permanent discharge of any of the facility's current medicaid  
9 residents. An assisted living facility that receives an initial  
10 continuing nursing services designation may not, for one year  
11 following the initial designation, reduce the number of medicaid  
12 residents that the facility accepts or retains below the highest  
13 number of medicaid residents living at the facility within one year  
14 prior to the application for an initial continuing nursing services  
15 designation. Any subsequent reduction must be made in accordance with  
16 this chapter and chapter 70.129 RCW. An assisted living facility with  
17 a designation to provide continuing nursing services that  
18 participates in the medicaid program may not involuntarily transfer,  
19 discharge, or otherwise refuse residence and services to a resident  
20 who was not enrolled in medicaid at the time of admission and  
21 subsequently enrolled in medicaid to finance their care, in whole or  
22 in part, following a change in health status that requires continuing  
23 nursing services.

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

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

29 (2) An assisted living facility license is not required for the  
30 housing, or services, that are customarily provided under landlord  
31 tenant agreements governed by the residential landlord-tenant act,  
32 chapter 59.18 RCW, or when housing nonresident individuals who chose  
33 to participate in programs or services under subsection (5) of this  
34 section, when offered by the assisted living facility licensee or the  
35 licensee's contractor. This subsection does not prohibit the licensee  
36 from furnishing written information concerning available community  
37 resources to the nonresident individual or the individual's family  
38 members or legal representatives. The licensee may not require the  
39 use of any particular service provider.

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

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

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

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

11 (c) Provides health support services, either directly or  
12 indirectly; (~~or~~)

13 (d) Provides intermittent nursing services, either directly or  
14 indirectly; or

15 (e) Provides continuing nursing services, either directly or  
16 indirectly.

17 (5) An assisted living facility license is not required for one  
18 or more of the following services that may, upon the request of the  
19 nonresident, be provided to a nonresident individual: (a) Emergency  
20 assistance provided on an intermittent or nonroutine basis; (b)  
21 systems, including technology-based monitoring devices, employed by  
22 independent senior housing, or independent living units in continuing  
23 care retirement communities, to respond to the potential need for  
24 emergency services; (c) scheduled and nonscheduled blood pressure  
25 checks; (d) nursing assessment services to determine whether referral  
26 to an outside health care provider is recommended; (e) making and  
27 reminding the nonresident of health care appointments; (f)  
28 preadmission assessment for the purposes of transitioning to a  
29 licensed care setting; (g) medication assistance which may include  
30 reminding or coaching the nonresident, opening the nonresident's  
31 medication container, using an enabler, and handing prefilled insulin  
32 syringes to the nonresident; (h) falls risk assessment; (i) nutrition  
33 management and education services; (j) dental services; (k) wellness  
34 programs; (l) prefilling insulin syringes when performed by a nurse  
35 licensed under chapter 18.79 RCW; or (m) services customarily  
36 provided under landlord tenant agreements governed by the residential  
37 landlord-tenant act, chapter 59.18 RCW.

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

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

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

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

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

18       (c) Staffing requirements; and

19       (d) Physical plant requirements.

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

22       ~~((No person operating an assisted living facility licensed under~~  
23 ~~this chapter shall admit to or retain in the assisted living facility~~  
24 ~~any aged person requiring nursing or medical care of a type provided~~  
25 ~~by institutions licensed under chapters 18.51, 70.41 or 71.12 RCW,~~  
26 ~~except that when registered nurses are available, and upon a doctor's~~  
27 ~~order that a supervised medication service is needed, it may be~~  
28 ~~provided. Supervised medication services, as defined by the~~  
29 ~~department and consistent with chapters 69.41 and 18.79 RCW, may~~  
30 ~~include an approved program of self-medication or self-directed~~  
31 ~~medication. Such medication service shall be provided only to~~  
32 ~~residents who otherwise meet all requirements for residency in an~~  
33 ~~assisted living facility. No assisted living facility shall admit or~~  
34 ~~retain a person who requires the frequent presence and frequent~~  
35 ~~evaluation of a registered nurse, excluding persons who are receiving~~  
36 ~~hospice care or persons who have a short term illness that is~~  
37 ~~expected to be resolved within fourteen days.)) The assisted living~~  
38 ~~facility licensed under this chapter must assume general~~  
39 ~~responsibility for each resident and must promote each resident's~~



1 health, safety, and well-being consistent with the resident  
2 negotiated care plan. In addition, the assisted living facility may  
3 provide assistance with activities of daily living, health support  
4 services, intermittent nursing services, and continuing nursing  
5 services, as may be further defined by the department in rule, and  
6 consistent with the care and services included in the disclosure form  
7 required under RCW 18.20.300. To provide continuing nursing services,  
8 the licensee shall obtain from the department a designation as  
9 required by section 2 of this act. Without first obtaining the  
10 required designation on its license, an assisted living facility may  
11 not admit or retain a person who requires the frequent presence and  
12 frequent evaluation of a licensed registered nurse, except for  
13 persons who are receiving hospice care or persons who have a short-  
14 term illness that is expected to be resolved within fourteen days.  
15 The assisted living facility must assure that sufficient numbers and  
16 appropriately qualified and trained staff are available to provide  
17 care and services consistent with this chapter.

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

20 (1) Assisted living facilities are not required to provide  
21 intermittent nursing services. The assisted living facility licensee  
22 may choose to provide any of the following intermittent nursing  
23 services through appropriately licensed and credentialed staff,  
24 however, the facility may or may not need to provide additional  
25 intermittent nursing services to comply with the reasonable  
26 accommodation requirements in federal or state law:

- 27 (a) Medication administration;  
28 (b) Administration of health care treatments;  
29 (c) Diabetic management;  
30 (d) Nonroutine ostomy care;  
31 (e) Tube feeding; and  
32 (f) Nurse delegation consistent with chapter 18.79 RCW.

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

36 (3) In providing intermittent nursing services, the assisted  
37 living facility shall observe the resident for changes in overall  
38 functioning and respond appropriately when there are observable or

1 reported changes in the resident's physical, mental, or emotional  
2 functioning.

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

7 Correct the title.

EFFECT: Prohibits assisted living facilities with a designation to provide continuing nursing services that are Medicaid providers from involuntarily transferring, discharging, or refusing residence and services to a resident who, because of a change in health status that requires continuing nursing services, becomes eligible for Medicaid or enrolls in Medicaid.

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