

---

HOUSE BILL 1548

---

State of Washington

65th Legislature

2017 Regular Session

By Representatives Schmick and Cody

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

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

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

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

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

19 (1) The facility shall have staff on duty twenty-four hours daily  
20 sufficient in number and qualifications to carry out the provisions

1 of RCW 74.42.010 through 74.42.570 and the policies,  
2 responsibilities, and programs of the facility.

3 (2) The department shall institute minimum staffing standards for  
4 nursing homes. Beginning July 1, 2016, facilities must provide a  
5 minimum of 3.4 hours per resident day of direct care. Direct care  
6 staff has the same meaning as defined in RCW 74.42.010. The minimum  
7 staffing standard includes the time when such staff are providing  
8 hands-on care related to activities of daily living and nursing-  
9 related tasks, as well as care planning. The legislature intends to  
10 increase the minimum staffing standard to 4.1 hours per resident day  
11 of direct care, but the effective date of a standard higher than 3.4  
12 hours per resident day of direct care will be identified if and only  
13 if funding is provided explicitly for an increase of the minimum  
14 staffing standard for direct care.

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

20 (b) The department shall establish in rule by January 1, 2016, a  
21 system of financial penalties for facilities out of compliance with  
22 minimum staffing standards. No monetary penalty may be issued during  
23 the implementation period of July 1, 2016, through September 30,  
24 2016. If a facility is found noncompliant during the implementation  
25 period, the department shall provide a written notice identifying the  
26 staffing deficiency and require the facility to provide a  
27 sufficiently detailed correction plan to meet the statutory minimum  
28 staffing levels. Monetary penalties begin October 1, 2016. Monetary  
29 penalties must be established based on a formula that calculates the  
30 cost of wages and benefits for the missing staff hours. If a facility  
31 meets the requirements in subsection (3) or (4) of this section, the  
32 penalty amount must be based solely on the wages and benefits of  
33 certified nurse aides. The first monetary penalty for noncompliance  
34 must be at a lower amount than subsequent findings of noncompliance.  
35 Monetary penalties established by the department may not exceed two  
36 hundred percent of the wage and benefit costs that would have  
37 otherwise been expended to achieve the required staffing minimum  
38  $((\text{HPRD} - [\text{hours per resident day}])) \text{ hours per resident day for the$   
39 quarter. A facility found out of compliance must be assessed a  
40 monetary penalty at the lowest penalty level if the facility has met

1 or exceeded the requirements in subsection (2) of this section for  
2 three or more consecutive years. Beginning July 1, 2016, pursuant to  
3 rules established by the department, funds that are received from  
4 financial penalties must be used for technical assistance,  
5 specialized training, or an increase to the quality enhancement  
6 established in RCW 74.46.561.

7 (c) The department shall establish in rule an exception allowing  
8 geriatric behavioral health workers as defined in RCW 74.42.010 to be  
9 recognized in the minimum staffing requirements as part of the direct  
10 care service delivery to individuals suffering from mental illness.  
11 In order to qualify for the exception:

12 (i) The worker must:

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

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

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

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

27 (d)(i) The department shall establish a limited exception to the  
28 3.4 ((HPRD [~~hours per resident day~~])) hours per resident day staffing  
29 requirement for facilities demonstrating a good faith effort to hire  
30 and retain staff.

31 (ii) To determine initial facility eligibility for exception  
32 consideration, the department shall send surveys to facilities  
33 anticipated to be below, at, or slightly above the 3.4 ((HPRD [~~hours~~  
34 ~~per resident day~~])) hours per resident day requirement. These surveys  
35 must measure the ((HPRD [~~hours per resident day~~])) hours per resident  
36 day in a manner as similar as possible to the centers for medicare  
37 and medicaid services' payroll-based journal and cover the staffing  
38 of a facility from October through December of 2015, January through  
39 March of 2016, and April through June of 2016. A facility must be  
40 below the 3.4 staffing standard on all three surveys to be eligible

1 for exception consideration. If the staffing ((HPRD [~~hours per~~  
2 ~~resident day~~])) hours per resident day for a facility declines from  
3 any quarter to another during the survey period, the facility must  
4 provide sufficient information to the department to allow the  
5 department to determine if the staffing decrease was deliberate or a  
6 result of neglect, which is the lack of evidence demonstrating the  
7 facility's efforts to maintain or improve its staffing ratio. The  
8 burden of proof is on the facility and the determination of whether  
9 or not the decrease was deliberate or due to neglect is entirely at  
10 the discretion of the department. If the department determines a  
11 facility's decline was deliberate or due to neglect, that facility is  
12 not eligible for an exception consideration.

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

29 (iv) Only facilities that have their direct care component rate  
30 increase capped according to RCW 74.46.561 are eligible for exception  
31 consideration. Facilities that will have their direct care component  
32 rate increase capped for one or two years are eligible for exception  
33 consideration through June 30, 2017. Facilities that will have their  
34 direct care component rate increase capped for three years are  
35 eligible for exception consideration through June 30, 2018.

36 (v) The department may not grant or renew a facility's exception  
37 if the facility meets the 3.4 ((HPRD [~~hours per resident day~~])) hours  
38 per resident day staffing requirement and subsequently drops below  
39 the 3.4 ((HPRD [~~hours per resident day~~])) hours per resident day  
40 staffing requirement.

1 (vi) The department may grant exceptions for a six-month period  
2 per exception. The department's authority to grant exceptions to the  
3 3.4 ((HPRD [~~hours per resident day~~])) hours per resident day staffing  
4 requirement expires June 30, 2018.

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

8 (b) The department shall establish a limited exception process to  
9 facilities that can demonstrate a good faith effort to hire a  
10 registered nurse for the last eight hours of required coverage per  
11 day. In granting an exception, the department may consider wages and  
12 benefits offered and the availability of registered nurses in the  
13 particular geographic area. A one-year exception may be granted and  
14 may be renewable for up to three consecutive years; however, the  
15 department may limit the admission of new residents, based on medical  
16 conditions or complexities, when a registered nurse is not on-site  
17 and readily available. If a facility receives an exemption, that  
18 information must be included in the department's nursing home  
19 locator. After June 30, 2019, the department, along with a  
20 stakeholder work group established by the department, shall conduct a  
21 review of the exceptions process to determine if it is still  
22 necessary.

23 (4) Essential community providers and small nonessential  
24 community providers must have a registered nurse on duty directly  
25 supervising resident care a minimum of sixteen hours per day, seven  
26 days per week, and a registered nurse or a licensed practical nurse  
27 on duty directly supervising resident care the remaining eight hours  
28 per day, seven days per week.

--- END ---