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ENGROSSED HOUSE BILL 2071

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State of Washington                      54th Legislature                      1995 Regular Session

By Representatives Dyer, Dellwo, Backlund and Hymes

Read first time 03/06/95. Referred to Committee on Health Care.

1            AN ACT Relating to authorizing the delegation of nursing care tasks  
2 for the provision of health treatment to individuals in community  
3 residential programs for the developmentally disabled, residents in  
4 adult family homes, and residents of licensed boarding homes  
5 contracting to provide assisted living services; amending RCW  
6 18.79.040, 18.79.260, 18.88A.030, and 70.128.130; adding new sections  
7 to chapter 18.88A RCW; creating new sections; and prescribing  
8 penalties.

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

10            NEW SECTION.    **Sec. 1.** A new section is added to chapter 18.88A RCW  
11 to read as follows:

12            The legislature recognizes that nurses have been successfully  
13 delegating nursing care tasks to family members and auxiliary staff for  
14 many years. The opportunity for a nurse to delegate to nursing  
15 assistants qualifying under section 2 of this act may enhance the  
16 viability and quality of care in community health settings for long-  
17 term care services and to allow citizens to live as independently as  
18 possible with maximum safeguards.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 18.88A RCW  
2 to read as follows:

3        (1) A nurse may delegate specific care tasks to nursing assistants  
4 meeting the requirements of this section and who provide care to  
5 individuals in community residential programs for the developmentally  
6 disabled certified by the department of social and health services  
7 under chapter 71A.12 RCW, to individuals residing in adult family homes  
8 licensed under chapter 70.128 RCW, and to individuals residing in  
9 boarding homes licensed under chapter 18.20 RCW contracting with the  
10 department of social and health services to provide assisted living  
11 services pursuant to RCW 74.39A.010.

12        (2) For the purposes of this section, "nursing assistant" means a  
13 nursing assistant-registered or a nursing assistant-certified. Nothing  
14 in this section may be construed to affect the authority of nurses to  
15 delegate nursing tasks to other persons, including licensed practical  
16 nurses, as authorized by law.

17        (3) Before commencing any specific nursing care tasks authorized  
18 under this chapter, the nursing assistant must (a) provide to the  
19 delegating nurse a certificate of completion issued by the department  
20 of social and health services indicating the completion of basic core  
21 training as provided in this section, (b) be regulated by the  
22 department of health pursuant to this chapter, subject to the uniform  
23 disciplinary act under chapter 18.130 RCW, and (c) meet any additional  
24 training requirements identified by the nursing care quality assurance  
25 commission and authorized by this section.

26        (4) A nurse may delegate the following care tasks:

27        (a) Oral and topical medications and ointments;

28        (b) Nose, ear, eye drops, and ointments;

29        (c) Dressing changes and catheterization using clean techniques as  
30 defined by the nursing care quality assurance commission;

31        (d) Suppositories, enemas, ostomy care;

32        (e) Blood glucose monitoring;

33        (f) Gastrostomy feedings in established and healed condition.

34        (5) On or before September 1, 1995, the nursing care quality  
35 assurance commission, in conjunction with the professional nursing  
36 organizations, shall develop rules for nurse delegation protocols and  
37 by December 5, 1995, identify training beyond the core training that is  
38 deemed necessary for the delegation of complex tasks and patient care.

1 (6) Nursing task delegation protocols are not intended to regulate  
2 the settings in which delegation may occur but are intended to ensure  
3 that nursing care services have a consistent standard of practice upon  
4 which the public and profession may rely and to safeguard the authority  
5 of the nurse to make independent professional decisions regarding the  
6 delegation of a task. Protocols shall include at least the following:

7 (a) Ensure that determination of the appropriateness of delegation  
8 of a nursing task is at the discretion of the nurse;

9 (b) Allow delegation of a nursing care task only for patients who  
10 have a stable and predictable condition. "Stable and predictable  
11 condition" means a situation, as defined by rule by the nursing care  
12 quality assurance commission, in which the patient's clinical and  
13 behavioral status is known and does not require frequent presence and  
14 evaluation of a registered nurse;

15 (c) Assure that the delegations of nursing tasks pursuant to this  
16 chapter have the written informed consent of the patient consistent  
17 with the provisions for informed consent under chapter 7.70 RCW, as  
18 well as with the consent of the delegating nurse and nursing assistant.  
19 The delegating nurse shall inform patients of the level of training of  
20 all care providers in the setting;

21 (d) Verify that the nursing assistant has completed the core  
22 training;

23 (e) Require assessment by the nurse of the ability and willingness  
24 of the nursing assistant to perform the delegated nursing task in the  
25 absence of direct nurse supervision and to refrain from delegation if  
26 the nursing assistant is not able or willing to perform the task;

27 (f) Require the nurse to analyze the complexity of the nursing task  
28 that is considered for delegation and determine the appropriate level  
29 of training and any need of additional training for the nursing  
30 assistant;

31 (g) Require the teaching of the nursing care task to the nursing  
32 assistant including return demonstration under observation while  
33 performing the task;

34 (h) Require a plan of nursing supervision and reevaluation of the  
35 delegated nursing task. "Nursing supervision" means that the  
36 registered nurse monitors by direct observation the skill and ability  
37 of the nursing assistant to perform delegated nursing tasks. Frequency  
38 of supervision is at the discretion of the registered nurse but shall  
39 occur at least every sixty days;

1 (i) Require instruction to the nursing assistant that the delegated  
2 nursing task is specific to a patient and is not transferable;

3 (j) Require documentation and written instruction related to the  
4 delegated nursing task be provided to the nursing assistant and a copy  
5 maintained in the patient record;

6 (k) Ensure that the nursing assistant is prepared to effectively  
7 deal with the predictable outcomes of performing the nursing task;

8 (l) Include in the delegation of tasks an awareness of the nature  
9 of the condition requiring treatment, risks of the treatment, side  
10 effects, and interaction of prescribed medications;

11 (m) Require documentation in the patient's record of the rationale  
12 for delegating or not delegating nursing tasks.

13 (7) A basic core training curriculum on providing care for  
14 individuals in community residential programs for the developmentally  
15 disabled certified by the department of social and health services  
16 under chapter 71A.12 RCW shall be in addition to the training  
17 requirements specified in subsection (5) of this section. Basic core  
18 training shall be developed and adopted by rule by the secretary of the  
19 department of social and health services. The department of social and  
20 health services shall appoint an advisory panel to assist in the  
21 development of core training comprised of representatives of the  
22 following:

23 (a) The division of developmental disabilities;

24 (b) The nursing care quality assurance commission;

25 (c) Professional nursing organizations;

26 (d) A state-wide organization of community residential service  
27 providers whose members are programs certified by the department under  
28 chapter 71A.12 RCW.

29 (8) A basic core training curriculum on providing care to residents  
30 in residential settings licensed under chapter 70.128 RCW, or in  
31 assisted living pursuant to RCW 74.39A.010 shall be mandatory for  
32 nursing assistants prior to assessment by a nurse regarding the ability  
33 and willingness to perform a delegated nursing task. Core training  
34 shall be developed and adopted by rule by the secretary of the  
35 department of social and health services, in conjunction with an  
36 advisory panel. The advisory panel shall be comprised of  
37 representatives from, at a minimum, the following:

38 (a) The nursing care quality assurance commission;

39 (b) Professional nurse organizations;

1 (c) A state-wide association of community residential service  
2 providers whose members are programs certified by the department under  
3 chapter 71A.12 RCW;

4 (d) Aging consumer groups;

5 (e) Associations representing homes licensed under chapters 70.128  
6 and 18.20 RCW; and

7 (f) Associations representing home health, hospice, and home care  
8 agencies licensed under chapter 70.127 RCW.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 18.88A RCW  
10 to read as follows:

11 On or before December 1, 1995, the department of health and the  
12 department of social and health services, in consultation with the  
13 nursing care quality assurance commission, shall develop and clarify  
14 program and reimbursement policies, as well as clarify barriers to  
15 current delegation, relating to the ability and authority of a nurse to  
16 delegate care tasks in the programs and services operating under their  
17 authority.

18 The nursing care quality assurance commission shall develop model  
19 forms that will assist in standardizing the practice of delegation.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 18.88A RCW  
21 to read as follows:

22 (1) The nurse and nursing assistant shall be accountable for their  
23 own individual actions in the delegation process. Nurses acting within  
24 the protocols of their delegation authority shall be immune from  
25 liability for any action performed in the course of their delegation  
26 duties. Nursing assistants following written delegation instructions  
27 from registered nurses performed in the course of their accurately  
28 written, delegated duties shall be immune from liability.

29 (2) No person may coerce a nurse into compromising patient safety  
30 by requiring the nurse to delegate if the nurse determines it is  
31 inappropriate to do so. Nurses shall not be subject to any employer  
32 reprisal or disciplinary action by the Washington nursing care quality  
33 assurance commission for refusing to delegate tasks or refusing to  
34 provide the required training for delegation if the nurse determines  
35 delegation may compromise patient safety. Nursing assistants shall not  
36 be subject to any employer reprisal or disciplinary action by the  
37 nursing care quality assurance commission for refusing to accept

1 delegation of a nursing task. No community residential program, adult  
2 family home, or boarding home contracting to provide assisted-living  
3 services may discriminate or retaliate in any manner against a person  
4 because the person made a complaint or cooperated in the investigation  
5 of a complaint.

6 (3) The department of social and health services shall impose a  
7 civil fine of not less than one hundred dollars nor more than one  
8 thousand dollars on a community residential program, adult family home,  
9 or boarding home under this act that knowingly permits an employee to  
10 perform a nursing task except as delegated by a nurse pursuant to this  
11 act.

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 18.88A RCW  
13 to read as follows:

14 The aging and adult services administration of the department of  
15 social and health services shall establish a toll-free telephone number  
16 for receiving complaints regarding delegation of specific nursing tasks  
17 to nursing assistants, in conjunction with any other such system  
18 maintained for long-term care services. Complaints specifically  
19 related to nurse-delegation shall be referred to the nursing care  
20 quality assurance commission for appropriate disposition in accordance  
21 with established procedures.

22 **Sec. 6.** RCW 18.79.040 and 1994 sp.s. c 9 s 404 are each amended to  
23 read as follows:

24 (1) "Registered nursing practice" means the performance of acts  
25 requiring substantial specialized knowledge, judgment, and skill based  
26 on the principles of the biological, physiological, behavioral, and  
27 sociological sciences in either:

28 (a) The observation, assessment, diagnosis, care or counsel, and  
29 health teaching of the ill, injured, or infirm, or in the maintenance  
30 of health or prevention of illness of others;

31 (b) The performance of such additional acts requiring education and  
32 training and that are recognized by the medical and nursing professions  
33 as proper and recognized by the commission to be performed by  
34 registered nurses licensed under this chapter and that are authorized  
35 by the commission through its rules;

36 (c) The administration, supervision, delegation, and evaluation of  
37 nursing practice. However, nothing in this subsection affects the

1 authority of a hospital, hospital district, medical clinic, or office,  
2 concerning its administration and supervision;

3 (d) The teaching of nursing;

4 (e) The executing of medical regimen as prescribed by a licensed  
5 physician and surgeon, dentist, osteopathic physician and surgeon,  
6 podiatric physician and surgeon, physician assistant, osteopathic  
7 physician assistant, or advanced registered nurse practitioner.

8 (2) Nothing in this section prohibits a person from practicing a  
9 profession for which a license has been issued under the laws of this  
10 state or specifically authorized by any other law of the state of  
11 Washington.

12 (3) This section does not prohibit (a) the nursing care of the  
13 sick, without compensation, by an unlicensed person who does not hold  
14 himself or herself out to be a registered nurse, (~~(or)~~) (b) the  
15 practice of licensed practical nursing by a licensed practical nurse,  
16 or (c) the practice of a nursing assistant, providing delegated nursing  
17 tasks under chapter 18.88A RCW.

18 **Sec. 7.** RCW 18.79.260 and 1994 sp.s. c 9 s 426 are each amended to  
19 read as follows:

20 A registered nurse under his or her license may perform for  
21 compensation nursing care, as that term is usually understood, of the  
22 ill, injured, or infirm, and in the course thereof, she or he may do  
23 the following things that shall not be done by a person not so  
24 licensed, except as provided in RCW 18.79.270 and section 2 of this  
25 act:

26 (1) At or under the general direction of a licensed physician and  
27 surgeon, dentist, osteopathic physician and surgeon, podiatric  
28 physician and surgeon, physician assistant, osteopathic physician  
29 assistant, or advanced registered nurse practitioner acting within the  
30 scope of his or her license, administer medications, treatments, tests,  
31 and inoculations, whether or not the severing or penetrating of tissues  
32 is involved and whether or not a degree of independent judgment and  
33 skill is required;

34 (2) Delegate to other persons (~~(engaged in nursing,)~~) the functions  
35 outlined in subsection (1) of this section in accordance with chapter  
36 18.88A RCW;

37 (3) Instruct nurses in technical subjects pertaining to nursing;

1 (4) Hold herself or himself out to the public or designate herself  
2 or himself as a registered nurse.

3 **Sec. 8.** RCW 18.88A.030 and 1994 sp.s. c 9 s 709 are each amended  
4 to read as follows:

5 (1) A nursing assistant may assist in the care of individuals as  
6 delegated by and under the direction and supervision of a licensed  
7 (registered) nurse or licensed practical nurse.

8 (2) A health care facility shall not assign a nursing assistant-  
9 registered to provide care until the nursing assistant-registered has  
10 demonstrated skills necessary to perform competently all assigned  
11 duties and responsibilities.

12 (3) Nothing in this chapter shall be construed to confer on a  
13 nursing assistant the authority to administer medication unless  
14 delegated as a specific nursing task pursuant to this chapter or to  
15 practice as a licensed (registered) nurse or licensed practical nurse  
16 as defined in chapter 18.79 RCW.

17 (4) Certification is voluntary for nursing assistants working in  
18 health care facilities other than nursing homes unless otherwise  
19 required by state or federal law or regulation.

20 (5) The commission may adopt rules to implement the provisions of  
21 this chapter.

22 **Sec. 9.** RCW 70.128.130 and 1989 c 427 s 26 are each amended to  
23 read as follows:

24 (1) Adult family homes shall be maintained internally and  
25 externally in good repair and condition. Such homes shall have safe  
26 and functioning systems for heating, cooling, hot and cold water,  
27 electricity, plumbing, garbage disposal, sewage, cooking, laundry,  
28 artificial and natural light, ventilation, and any other feature of the  
29 home.

30 (2) Adult family homes shall be maintained in a clean and sanitary  
31 manner, including proper sewage disposal, food handling, and hygiene  
32 practices.

33 (3) Adult family homes shall develop a fire drill plan for  
34 emergency evacuation of residents, shall have smoke detectors in each  
35 bedroom where a resident is located, shall have fire extinguishers on  
36 each floor of the home, and shall not keep nonambulatory patients above  
37 the first floor of the home.

1 (4) Adult family homes shall have clean, functioning, and safe  
2 household items and furnishings.

3 (5) Adult family homes shall provide a nutritious and balanced diet  
4 and shall recognize residents' needs for special diets.

5 (6) Adult family homes shall establish health care procedures for  
6 the care of residents including medication administration and emergency  
7 medical care.

8 (a) Adult family home residents shall be permitted to self-  
9 administer medications.

10 (b) Adult family home providers may administer medications and  
11 deliver special care only to the extent (~~that the provider is a~~  
12 ~~licensed health care professional for whom the administration of~~  
13 ~~medications is within the scope of practice under Washington~~)  
14 authorized by law.

15 NEW SECTION. **Sec. 10.** The secretary of health in consultation  
16 with the Washington nursing care quality assurance commission, the  
17 school of public health and community medicine and the school of  
18 nursing of the University of Washington, and the department of social  
19 and health services shall monitor the implementation of this act and  
20 shall make an interim report by December 31, 1996, and a final report  
21 by December 31, 1997, to the legislature on the effectiveness of this  
22 act, including protecting the health and safety of persons with  
23 developmental disabilities and residents of adult family homes and  
24 boarding homes providing assisted living services, including the  
25 appropriateness of the tasks allowed for delegation, level and type of  
26 training and regulation of nursing assistants, and with any  
27 recommendations for improvements. The report shall be based on direct  
28 observation, documentation, and interviews, and shall specifically  
29 include outcome data on the following:

- 30 (1) Patient, nurse, and nursing assistant satisfaction;  
31 (2) Medication errors, including those resulting in  
32 hospitalization;  
33 (3) Noncompliance with required training;  
34 (4) Noncompliance with nurse delegation protocols;  
35 (5) Incidence of harm to patients, including abuse and neglect;  
36 (6) Impact on access to care;  
37 (7) Impact on patient independence;  
38 (8) Impact on patient quality of life; and

1 (9) Incidence of coercion in the nurse-delegation process.

2 NEW SECTION. **Sec. 11.** A special legislative task force is  
3 established to monitor implementation of this act. The task force  
4 shall consist of four members from the house of representatives, no  
5 more than two of whom shall be members of the same caucus, who shall be  
6 appointed by the speaker of the house of representatives, and four  
7 members from the senate, no more than two of whom shall be members of  
8 the same caucus, who shall be appointed by the president of the senate.  
9 The task force shall:

10 (1) Review the proposed nurse delegation protocols developed by the  
11 nursing care quality assurance commission;

12 (2) Review the proposed core and specialized training curricula  
13 developed by the department of social and health services and by the  
14 nursing care quality assurance commission;

15 (3) Review the program and reimbursement policies, and the  
16 identified barriers to nurse delegation, developed by the department of  
17 health and department of social and health services;

18 (4) Submit an interim report of its findings and recommendations on  
19 the above actions to the legislature by January 1, 1996;

20 (5) During 1996, conduct hearings to assess the effectiveness with  
21 which the delegation protocols, the core training, and nurse oversight  
22 are being implemented, and their impact on patient care and quality of  
23 life;

24 (6) Review and approve the proposed study designs;

25 (7) By February 1, 1997, recommend to the legislature a mechanism  
26 and time frame for extending nurse delegation provisions similar to  
27 those described in this act to persons residing in their own homes;

28 (8) During 1997, receive interim reports on the findings of the  
29 studies conducted in accordance with this act, and conduct additional  
30 fact-finding hearings on the implementation and impact of the nurse  
31 delegation provisions of this act.

32 The office of program research and senate committee services shall  
33 provide staff support to the task force. The department of health, the  
34 department of social and health services, and the nursing care quality  
35 assurance commission shall provide technical support as needed. The

1 task force shall cease to exist on January 1, 1998, unless extended by  
2 act of the legislature.

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