

# HOUSE BILL REPORT

## EHB 2357

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### As Passed Legislature

**Title:** An act relating to modifying nursing facility medicaid payments by clarifying legislative intent regarding the statewide weighted average, freezing case mix indices, and revising the use of the economic trends and conditions factor.

**Brief Description:** Concerning modifying nursing facility medicaid payments by clarifying legislative intent regarding the statewide weighted average, freezing case mix indices, and revising the use of the economic trends and conditions factor.

**Sponsors:** Representative Cody.

#### Brief History:

##### Committee Activity:

Ways & Means: 4/16/09, 4/25/09 [DP].

##### Floor Activity:

Passed House: 4/25/09, 95-0.

Senate Amended.

Passed Senate: 4/26/09, 47-0.

House Concurred.

Passed House: 4/26/09, 95-0.

Passed Legislature.

#### Brief Summary of Engrossed Bill

- Clarifies how vendor rate adjustments are calculated based on economic trends and conditions.
- Authorizes the Department of Social and Health Services (DSHS) to freeze temporarily the case mix indices used for case mix adjustments until the upgrade to the new Minimum Data Set (MDS).
- Requires the DSHS to review the non-case mix adjusted period and make retrospective payment adjustments to the nursing facilities for that time period once the new MDS system is in place.

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### HOUSE COMMITTEE ON WAYS & MEANS

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** Do pass. Signed by 22 members: Representatives Linville, Chair; Ericks, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest, Ross, Schmick, Seaquist and Sullivan.

**Staff:** Carma Matti (786-7140)

**Background:**

There are about 226 nursing homes in Washington providing long-term care services to approximately 11,115 Medicaid clients.

Nursing Home Rates Generally.

The nursing home payment system is detailed in statute and consists of seven different rate components: direct care, therapy care, support services, operations, property, financing allowance, and variable return. The rates are unique to each facility and adjusted quarterly for client acuity.

The Statewide Weighted Average (Budget Dial).

In the biennial appropriations act, the Legislature sets a statewide weighted average nursing facility Medicaid payment rate, sometimes referred to as the "budget dial." If the actual statewide nursing facility payment rates exceed the budget dial, the Department of Social and Health Services (DSHS or Department) is required to proportionally adjust downward all nursing facility payment rates to meet the budget dial.

Cost and client data reported by the individual facilities is used in this process and a settlement process allows for adjustments due to under-spending or overspending in each rate component.

Economic Trends and Conditions.

The Legislature appropriates dollar amounts and inflationary factors for the Department to establish vendor rates in the biennial appropriations act. When the Department establishes the vendor rates it reviews the most recent legislative action and applies any authorized inflationary factor to establish new rates.

During the last economic trends and conditions adjustment to the rates, the Department calculated the adjustment using the factors established by the Legislature for the 2007-09 biennium. Life Care Center of America challenged the calculation in court arguing the inflationary adjustment for economic trends and conditions should be compounded since the last rebase period.

The Thurston County Superior Court ruled in *Life Care Center of America v. DSHS* that the Department had erred in its method of applying the vendor rate increase to the July 1, 2006 rates of the Life Care facilities. This ruling has been applied to all nursing homes effective July 1, 2008, and payment adjustments have been made. Due to these payment adjustments, the budget dial was exceeded April 1, 2009, and all nursing homes received a subsequent downward adjustment to their rates.

### Case Mix Adjustments.

Every quarter an adjustment is made to each facility's rate based on the acuity of the clients they serve. To make this adjustment, the Department gathers data through a minimum data set required by Centers for Medicare and Medicaid Services (CMS). The data gathered is then used to establish indices which is used to calculate the case mix adjustment.

The CMS requires new and different information to be included in the Minimum Data Set (MDS) effective October 1, 2010. Under current law, the assessments gathered under the new MDS 3.0 should be used to set April 1, 2011, rates. Data through the current system (MDS 2.0) will not be available between October 1, 2010, and when MDS 3.0 is fully implemented.

### **Summary of Engrossed Bill:**

#### Economic Trends and Conditions.

Economic trends and condition increases are not to be calculated cumulatively, but are solely based on the percentages called out in the biennial appropriations act. When no economic trends and conditions factors are defined in a biennial appropriations act, no economic trends and conditions factors from earlier biennial appropriations act may be applied or compounded to component rate allocations.

#### Case Mix Adjustments.

Case mix indices are temporarily frozen to the last full quarter of data available prior to the upgrade of the MDS 3.0. Once MDS 3.0 is fully implemented, the Department is required to retroactively adjust all nursing home rates for case mix changes that occurred during the period when the case mix indices were frozen.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

### **Staff Summary of Public Testimony:**

None.

**Persons Testifying:** None.

**Persons Signed In To Testify But Not Testifying:** None.