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ENGROSSED HOUSE BILL 2357

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State of Washington

61st Legislature

2009 Regular Session

By Representative Cody

1 AN ACT Relating to modifying nursing facility medicaid payments by  
2 clarifying legislative intent regarding the statewide weighted average,  
3 freezing case mix indices, and revising the use of the economic trends  
4 and conditions factor; amending RCW 74.46.010, 74.46.431, and  
5 74.46.485; and declaring an emergency.

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

7 **Sec. 1.** RCW 74.46.010 and 1998 c 322 s 1 are each amended to read  
8 as follows:

9 This chapter may be known and cited as the "nursing facility  
10 medicaid payment system."

11 The purposes of this chapter are to specify the manner by which  
12 legislative appropriations for medicaid nursing facility services are  
13 to be allocated as payment rates among nursing facilities, and to set  
14 forth auditing, billing, and other administrative standards associated  
15 with payments to nursing home facilities.

16 It is the intent and belief of the legislature that: (a) The  
17 payment rates calculated pursuant to this chapter bear a reasonable  
18 relationship to the costs incurred by facilities that are efficiently  
19 and economically operated and that provide quality services and (b) the

1 annual cost reports that facilities must submit to the department, as  
2 reviewed and audited by the department, constitute reliable data upon  
3 which to determine the payment rates.

4 **Sec. 2.** RCW 74.46.431 and 2008 c 263 s 2 are each amended to read  
5 as follows:

6 (1) Effective July 1, 1999, nursing facility medicaid payment rate  
7 allocations shall be facility-specific and shall have seven components:  
8 Direct care, therapy care, support services, operations, property,  
9 financing allowance, and variable return. The department shall  
10 establish and adjust each of these components, as provided in this  
11 section and elsewhere in this chapter, for each medicaid nursing  
12 facility in this state.

13 (2) Component rate allocations in therapy care, support services,  
14 variable return, operations, property, and financing allowance for  
15 essential community providers as defined in this chapter shall be based  
16 upon a minimum facility occupancy of eighty-five percent of licensed  
17 beds, regardless of how many beds are set up or in use. For all  
18 facilities other than essential community providers, effective July 1,  
19 2001, component rate allocations in direct care, therapy care, support  
20 services, and variable return shall be based upon a minimum facility  
21 occupancy of eighty-five percent of licensed beds. For all facilities  
22 other than essential community providers, effective July 1, 2002, the  
23 component rate allocations in operations, property, and financing  
24 allowance shall be based upon a minimum facility occupancy of ninety  
25 percent of licensed beds, regardless of how many beds are set up or in  
26 use. For all facilities, effective July 1, 2006, the component rate  
27 allocation in direct care shall be based upon actual facility  
28 occupancy. The median cost limits used to set component rate  
29 allocations shall be based on the applicable minimum occupancy  
30 percentage. In determining each facility's therapy care component rate  
31 allocation under RCW 74.46.511, the department shall apply the  
32 applicable minimum facility occupancy adjustment before creating the  
33 array of facilities' adjusted therapy costs per adjusted resident day.  
34 In determining each facility's support services component rate  
35 allocation under RCW 74.46.515(3), the department shall apply the  
36 applicable minimum facility occupancy adjustment before creating the  
37 array of facilities' adjusted support services costs per adjusted

1 resident day. In determining each facility's operations component rate  
2 allocation under RCW 74.46.521(3), the department shall apply the  
3 minimum facility occupancy adjustment before creating the array of  
4 facilities' adjusted general operations costs per adjusted resident  
5 day.

6 (3) Information and data sources used in determining medicaid  
7 payment rate allocations, including formulas, procedures, cost report  
8 periods, resident assessment instrument formats, resident assessment  
9 methodologies, and resident classification and case mix weighting  
10 methodologies, may be substituted or altered from time to time as  
11 determined by the department.

12 (4)(a) Direct care component rate allocations shall be established  
13 using adjusted cost report data covering at least six months. Adjusted  
14 cost report data from 1996 will be used for October 1, 1998, through  
15 June 30, 2001, direct care component rate allocations; adjusted cost  
16 report data from 1999 will be used for July 1, 2001, through June 30,  
17 2006, direct care component rate allocations. Adjusted cost report  
18 data from 2003 will be used for July 1, 2006, through June 30, 2007,  
19 direct care component rate allocations. Adjusted cost report data from  
20 2005 will be used for July 1, 2007, through June 30, 2009, direct care  
21 component rate allocations. Effective July 1, 2009, the direct care  
22 component rate allocation shall be rebased biennially, and thereafter  
23 for each odd-numbered year beginning July 1st, using the adjusted cost  
24 report data for the calendar year two years immediately preceding the  
25 rate rebase period, so that adjusted cost report data for calendar year  
26 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

27 (b) Direct care component rate allocations based on 1996 cost  
28 report data shall be adjusted annually for economic trends and  
29 conditions by a factor or factors defined in the biennial  
30 appropriations act. A different economic trends and conditions  
31 adjustment factor or factors may be defined in the biennial  
32 appropriations act for facilities whose direct care component rate is  
33 set equal to their adjusted June 30, 1998, rate, as provided in RCW  
34 74.46.506(5)(i).

35 (c) Direct care component rate allocations based on 1999 cost  
36 report data shall be adjusted annually for economic trends and  
37 conditions by a factor or factors defined in the biennial  
38 appropriations act. A different economic trends and conditions

1 adjustment factor or factors may be defined in the biennial  
2 appropriations act for facilities whose direct care component rate is  
3 set equal to their adjusted June 30, 1998, rate, as provided in RCW  
4 74.46.506(5)(i).

5 (d) Direct care component rate allocations based on 2003 cost  
6 report data shall be adjusted annually for economic trends and  
7 conditions by a factor or factors defined in the biennial  
8 appropriations act. A different economic trends and conditions  
9 adjustment factor or factors may be defined in the biennial  
10 appropriations act for facilities whose direct care component rate is  
11 set equal to their adjusted June 30, 2006, rate, as provided in RCW  
12 74.46.506(5)(i).

13 (e) Direct care component rate allocations established in  
14 accordance with this chapter shall be adjusted annually for economic  
15 trends and conditions by a factor or factors defined in the biennial  
16 appropriations act. The economic trends and conditions factor or  
17 factors defined in the biennial appropriations act shall not be  
18 compounded with the economic trends and conditions factor or factors  
19 defined in any other biennial appropriations acts before applying it to  
20 the direct care component rate allocation established in accordance  
21 with this chapter. When no economic trends and conditions factor or  
22 factors for either fiscal year are defined in a biennial appropriations  
23 act, no economic trends and conditions factor or factors defined in any  
24 earlier biennial appropriations act shall be applied solely or  
25 compounded to the direct care component rate allocation established in  
26 accordance with this chapter.

27 (5)(a) Therapy care component rate allocations shall be established  
28 using adjusted cost report data covering at least six months. Adjusted  
29 cost report data from 1996 will be used for October 1, 1998, through  
30 June 30, 2001, therapy care component rate allocations; adjusted cost  
31 report data from 1999 will be used for July 1, 2001, through June 30,  
32 2005, therapy care component rate allocations. Adjusted cost report  
33 data from 1999 will continue to be used for July 1, 2005, through June  
34 30, 2007, therapy care component rate allocations. Adjusted cost  
35 report data from 2005 will be used for July 1, 2007, through June 30,  
36 2009, therapy care component rate allocations. Effective July 1, 2009,  
37 and thereafter for each odd-numbered year beginning July 1st, the  
38 therapy care component rate allocation shall be cost rebased

1 biennially, using the adjusted cost report data for the calendar year  
2 two years immediately preceding the rate rebase period, so that  
3 adjusted cost report data for calendar year 2007 is used for July 1,  
4 2009, through June 30, 2011, and so forth.

5 (b) Therapy care component rate allocations established in  
6 accordance with this chapter shall be adjusted annually for economic  
7 trends and conditions by a factor or factors defined in the biennial  
8 appropriations act. The economic trends and conditions factor or  
9 factors defined in the biennial appropriations act shall not be  
10 compounded with the economic trends and conditions factor or factors  
11 defined in any other biennial appropriations acts before applying it to  
12 the therapy care component rate allocation established in accordance  
13 with this chapter. When no economic trends and conditions factor or  
14 factors for either fiscal year are defined in a biennial appropriations  
15 act, no economic trends and conditions factor or factors defined in any  
16 earlier biennial appropriations act shall be applied solely or  
17 compounded to the therapy care component rate allocation established in  
18 accordance with this chapter.

19 (6)(a) Support services component rate allocations shall be  
20 established using adjusted cost report data covering at least six  
21 months. Adjusted cost report data from 1996 shall be used for October  
22 1, 1998, through June 30, 2001, support services component rate  
23 allocations; adjusted cost report data from 1999 shall be used for July  
24 1, 2001, through June 30, 2005, support services component rate  
25 allocations. Adjusted cost report data from 1999 will continue to be  
26 used for July 1, 2005, through June 30, 2007, support services  
27 component rate allocations. Adjusted cost report data from 2005 will  
28 be used for July 1, 2007, through June 30, 2009, support services  
29 component rate allocations. Effective July 1, 2009, and thereafter for  
30 each odd-numbered year beginning July 1st, the support services  
31 component rate allocation shall be cost rebased biennially, using the  
32 adjusted cost report data for the calendar year two years immediately  
33 preceding the rate rebase period, so that adjusted cost report data for  
34 calendar year 2007 is used for July 1, 2009, through June 30, 2011, and  
35 so forth.

36 (b) Support services component rate allocations established in  
37 accordance with this chapter shall be adjusted annually for economic  
38 trends and conditions by a factor or factors defined in the biennial

1 appropriations act. The economic trends and conditions factor or  
2 factors defined in the biennial appropriations act shall not be  
3 compounded with the economic trends and conditions factor or factors  
4 defined in any other biennial appropriations acts before applying it to  
5 the support services component rate allocation established in  
6 accordance with this chapter. When no economic trends and conditions  
7 factor or factors for either fiscal year are defined in a biennial  
8 appropriations act, no economic trends and conditions factor or factors  
9 defined in any earlier biennial appropriations act shall be applied  
10 solely or compounded to the support services component rate allocation  
11 established in accordance with this chapter.

12 (7)(a) Operations component rate allocations shall be established  
13 using adjusted cost report data covering at least six months. Adjusted  
14 cost report data from 1996 shall be used for October 1, 1998, through  
15 June 30, 2001, operations component rate allocations; adjusted cost  
16 report data from 1999 shall be used for July 1, 2001, through June 30,  
17 2006, operations component rate allocations. Adjusted cost report data  
18 from 2003 will be used for July 1, 2006, through June 30, 2007,  
19 operations component rate allocations. Adjusted cost report data from  
20 2005 will be used for July 1, 2007, through June 30, 2009, operations  
21 component rate allocations. Effective July 1, 2009, and thereafter for  
22 each odd-numbered year beginning July 1st, the operations component  
23 rate allocation shall be cost rebased biennially, using the adjusted  
24 cost report data for the calendar year two years immediately preceding  
25 the rate rebase period, so that adjusted cost report data for calendar  
26 year 2007 is used for July 1, 2009, through June 30, 2011, and so  
27 forth.

28 (b) Operations component rate allocations established in accordance  
29 with this chapter shall be adjusted annually for economic trends and  
30 conditions by a factor or factors defined in the biennial  
31 appropriations act. The economic trends and conditions factor or  
32 factors defined in the biennial appropriations act shall not be  
33 compounded with the economic trends and conditions factor or factors  
34 defined in any other biennial appropriations acts before applying it to  
35 the operations component rate allocation established in accordance with  
36 this chapter. When no economic trends and conditions factor or factors  
37 for either fiscal year are defined in a biennial appropriations act, no  
38 economic trends and conditions factor or factors defined in any earlier

1 biennial appropriations act shall be applied solely or compounded to  
2 the operations component rate allocation established in accordance with  
3 this chapter. A different economic trends and conditions adjustment  
4 factor or factors may be defined in the biennial appropriations act for  
5 facilities whose operations component rate is set equal to their  
6 adjusted June 30, 2006, rate, as provided in RCW 74.46.521(4).

7 (8) For July 1, 1998, through September 30, 1998, a facility's  
8 property and return on investment component rates shall be the  
9 facility's June 30, 1998, property and return on investment component  
10 rates, without increase. For October 1, 1998, through June 30, 1999,  
11 a facility's property and return on investment component rates shall be  
12 rebased utilizing 1997 adjusted cost report data covering at least six  
13 months of data.

14 (9) Total payment rates under the nursing facility medicaid payment  
15 system shall not exceed facility rates charged to the general public  
16 for comparable services.

17 (10) Medicaid contractors shall pay to all facility staff a minimum  
18 wage of the greater of the state minimum wage or the federal minimum  
19 wage.

20 (11) The department shall establish in rule procedures, principles,  
21 and conditions for determining component rate allocations for  
22 facilities in circumstances not directly addressed by this chapter,  
23 including but not limited to: The need to prorate inflation for  
24 partial-period cost report data, newly constructed facilities, existing  
25 facilities entering the medicaid program for the first time or after a  
26 period of absence from the program, existing facilities with expanded  
27 new bed capacity, existing medicaid facilities following a change of  
28 ownership of the nursing facility business, facilities banking beds or  
29 converting beds back into service, facilities temporarily reducing the  
30 number of set-up beds during a remodel, facilities having less than six  
31 months of either resident assessment, cost report data, or both, under  
32 the current contractor prior to rate setting, and other circumstances.

33 (12) The department shall establish in rule procedures, principles,  
34 and conditions, including necessary threshold costs, for adjusting  
35 rates to reflect capital improvements or new requirements imposed by  
36 the department or the federal government. Any such rate adjustments  
37 are subject to the provisions of RCW 74.46.421.

1 (13) Effective July 1, 2001, medicaid rates shall continue to be  
2 revised downward in all components, in accordance with department  
3 rules, for facilities converting banked beds to active service under  
4 chapter 70.38 RCW, by using the facility's increased licensed bed  
5 capacity to recalculate minimum occupancy for rate setting. However,  
6 for facilities other than essential community providers which bank beds  
7 under chapter 70.38 RCW, after May 25, 2001, medicaid rates shall be  
8 revised upward, in accordance with department rules, in direct care,  
9 therapy care, support services, and variable return components only, by  
10 using the facility's decreased licensed bed capacity to recalculate  
11 minimum occupancy for rate setting, but no upward revision shall be  
12 made to operations, property, or financing allowance component rates.  
13 The direct care component rate allocation shall be adjusted, without  
14 using the minimum occupancy assumption, for facilities that convert  
15 banked beds to active service, under chapter 70.38 RCW, beginning on  
16 July 1, 2006. Effective July 1, 2007, component rate allocations for  
17 direct care shall be based on actual patient days regardless of whether  
18 a facility has converted banked beds to active service.

19 (14) Facilities obtaining a certificate of need or a certificate of  
20 need exemption under chapter 70.38 RCW after June 30, 2001, must have  
21 a certificate of capital authorization in order for (a) the  
22 depreciation resulting from the capitalized addition to be included in  
23 calculation of the facility's property component rate allocation; and  
24 (b) the net invested funds associated with the capitalized addition to  
25 be included in calculation of the facility's financing allowance rate  
26 allocation.

27 **Sec. 3.** RCW 74.46.485 and 1998 c 322 s 22 are each amended to read  
28 as follows:

29 (1) The department shall:

30 (a) Employ the resource utilization group III case mix  
31 classification methodology. The department shall use the forty-four  
32 group index maximizing model for the resource utilization group III  
33 grouper version 5.10, but the department may revise or update the  
34 classification methodology to reflect advances or refinements in  
35 resident assessment or classification, subject to federal requirements;  
36 and



1       (b) Implement minimum data set 3.0 under the authority of this  
2 section and RCW 74.46.431(3). The department must notify nursing home  
3 contractors twenty-eight days in advance the date of implementation of  
4 the minimum data set 3.0. In the notification, the department must  
5 identify for all quarterly rate settings following the date of minimum  
6 data set 3.0 implementation a previously established quarterly case mix  
7 adjustment established for the quarterly rate settings that will be  
8 used for quarterly case mix calculations in direct care until minimum  
9 data set 3.0 is fully implemented. After the department has fully  
10 implemented minimum data set 3.0, it must adjust any quarter in which  
11 it used the previously established quarterly case mix adjustment using  
12 the new minimum data set 3.0 data.

13       (2) A default case mix group shall be established for cases in  
14 which the resident dies or is discharged for any purpose prior to  
15 completion of the resident's initial assessment. The default case mix  
16 group and case mix weight for these cases shall be designated by the  
17 department.

18       (3) A default case mix group may also be established for cases in  
19 which there is an untimely assessment for the resident. The default  
20 case mix group and case mix weight for these cases shall be designated  
21 by the department.

22       NEW SECTION. Sec. 4. This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of the  
24 state government and its existing public institutions, and takes effect  
25 immediately.

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