H-1801.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 1645**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Bateman, Schmick, Callan, Santos, Tharinger, Stonier, and Riccelli

AN ACT Relating to medicaid assisted living payment methodology; amending RCW 74.39A.032 and 70.129.030; and creating new sections.

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

NEW SECTION. **Sec.**  The outdated medicaid payment methodology was replaced by the 2018 legislature with a new payment system that is based on prevalent wages supported by verifiable, public data and the hours of care needed for each resident's acuity according to a time study conducted by the department of social and health services. While it was intended that the model be fully phased-in, the legislature finds that this methodology is currently only phased-in to 60 percent and that medicaid payments for wages have fallen below the state minimum wage. Assisted living contractors that provide care for medicaid clients are unable to hire and retain the necessary workforce. As employers to thousands of nursing staff who are over 40 percent nonwhite or foreign born and predominately older females, it is essential that these providers are able to keep up with prevailing wages. The legislature also recognizes that the population aged 79 and older is growing rapidly and it is critical to update state policies including provider payment rates to ensure the availability of enrolled medicaid providers is sufficient to serve the number of beneficiaries who wish to remain within geographic proximity to their own community. The legislature finds assisted living is a valued partner in providing care to Washington state's low-income elderly populations and, as such, intends to formalize the medicaid payment methodology phase-in schedule.

**Sec.**  RCW 74.39A.032 and 2018 c 225 s 3 are each amended to read as follows:

(1) The department shall establish in rule a new medicaid payment system for contracted assisted living, adult residential care, and enhanced adult residential care. Beginning July 1, 2019, payments for these contracts must be based on the new methodology which must be phased-in to ((~~full~~)) 77 percent of the fully funded model by July 1, 2022, and to 85 percent of the fully funded model by July 1, 2023. Full implementation must be achieved by July 1, 2026, according to funding made available by the legislature for this purpose. The new payment system must have these components: Client care, operations, and room and board.

(2) Client care is the labor component of the system and must include variables to recognize the time and intensity of client care and services, staff wages, and associated fringe benefits. The wage variable in the client care component must be adjusted according to service areas based on labor costs.

(a) The time variable is used to weight the client care payment to client acuity and must be scaled according to the classification levels utilized in the department's assessment tool. The initial system shall establish a variable for time using the residential care time study conducted in 2001 and the department's corresponding estimate of the average staff hours per client by job position.

(b) The wage variable shall include recognition of staff positions needed to perform the functions required by contract, including nursing services. Data used to establish the wage variable must be adjusted so that no baseline wage is below the state minimum in effect at the time of implementation. The wage variable is a blended wage based on the federal bureau of labor statistics wage data and the distribution of time according to staff position. Blended wages are established for each county and then counties are arrayed from highest to lowest. Service areas are established and the median blended wage in each service area becomes the wage variable for all the assigned counties in that service area. The system must have no less than two service areas, one of which shall be a high labor cost service area and shall include counties at or above the ninety-fifth percentile in the array of blended wages.

(c) The fringe benefit variable recognizes employee benefits and payroll taxes. The factor to calculate the percentage of fringe benefits shall be established using the statewide nursing facility cost ratio of benefits and payroll taxes to in-house wages.

(3) The operations component must recognize costs that are allowable under federal medicaid rules for the federal matching percentage. The operations component is calculated at ninety percent or greater of the statewide median nursing facility costs associated with the following:

(a) Supplies;

(b) Nonlabor administrative expenses;

(c) Staff education and in-service training; and

(d) Operational overhead including licenses, insurance, and business and ((~~occupational [occupation]~~)) occupation taxes.

(4) The room and board component recognizes costs that do not qualify for federal financial participation under medicaid rules by compensating providers for the medicaid client's share of raw food and shelter costs including expenses related to the physical plant such as property taxes, property and liability insurance, debt service, and major capital repairs. The room and board component is subject to the department's and the Washington state health care authority's rules related to client financial responsibility.

(5) Subsections (2) and (3) of this section establish the rate for medicaid covered services. Subsection (4) of this section establishes the rate for nonmedicaid covered services.

(6) The rates paid on July 1, 2019, shall be based on data from the 2016 calendar year, except for the time variable under subsection (2)(a) of this section. The client care and operations components must be rebased in even-numbered years. Beginning with rates paid on July 1, 2020, wages, benefits and taxes, and operations costs shall be rebased using 2018 data.

(7) Beginning July 1, 2020, the room and board component shall be updated annually subject to the department's and the Washington state health care authority's rules related to client financial responsibility.

**Sec.**  RCW 70.129.030 and 2021 c 159 s 23 are each amended to read as follows:

(1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The notification must be made prior to or upon admission. Receipt of the information must be acknowledged in writing.

(2) The resident to the extent provided by law or resident representative to the extent provided by law, has the right:

(a) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or portions of them upon request and two working days' advance notice to the facility.

(3) The facility shall only admit or retain individuals whose needs it can safely and appropriately serve in the facility with appropriate available staff and through the provision of reasonable accommodations required by state or federal law. Except in cases of genuine emergency, the facility shall not admit an individual before obtaining a thorough assessment of the resident's needs and preferences. The assessment shall contain, unless unavailable despite the best efforts of the facility, the resident applicant, and other interested parties, the following minimum information: Recent medical history; necessary and contraindicated medications; a licensed medical or other health professional's diagnosis, unless the individual objects for religious reasons; significant known behaviors or symptoms that may cause concern or require special care; mental illness, except where protected by confidentiality laws; level of personal care needs; activities and service preferences; and preferences regarding other issues important to the resident applicant, such as food and daily routine.

(4) The facility must inform each resident in writing in a language the resident or resident representative understands before admission, and at least once every twenty-four months thereafter of: (a) Services, items, and activities customarily available in the facility or arranged for by the facility as permitted by the facility's license; (b) charges for those services, items, and activities including charges for services, items, and activities not covered by the facility's per diem rate or applicable public benefit programs; ((~~and~~)) (c) facility policies concerning medicaid insurance; and (d) the rules of facility operations required under RCW 70.129.140(2). Each resident and resident representative must be informed in writing in advance of changes in the availability or the charges for services, items, or activities, or of changes in the facility's rules. Except in emergencies, thirty days' advance notice must be given prior to the change. However, for facilities licensed for six or fewer residents, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities, then the charges for those services, items, or activities may be changed upon fourteen days' advance written notice.

(5) The facility must furnish a written description of residents rights that includes:

(a) A description of the manner of protecting personal funds, under RCW 70.129.040;

(b) A posting of names, addresses, and telephone numbers of the state survey and certification agency, the state licensure office, the state ombuds program, and the protection and advocacy systems; and

(c) A statement that the resident may file a complaint with the appropriate state licensing agency concerning alleged resident abuse, neglect, and misappropriation of resident property in the facility.

(6) Notification of changes.

(a) A facility must immediately consult with the resident's physician, and if known, make reasonable efforts to notify the resident representative to the extent provided by law when there is:

(i) An accident involving the resident which requires or has the potential for requiring physician intervention;

(ii) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications).

(b) The facility must promptly notify the resident or resident representative when there is:

(i) A change in room or roommate assignment; or

(ii) A decision to transfer or discharge the resident from the facility.

(c) The facility must record and update the address, phone number, and any other contact information of the resident representative, upon receipt of notice from them.

NEW SECTION. **Sec.**  (1)(a) The department of social and health services shall convene a stakeholder work group to develop a prevailing wage report and reporting process for medicaid providers. The department must implement the reporting requirement to coincide with the payment system being phased-in to 85 percent of the fully funded model. Beginning with the first report and continuing until the medicaid payment methodology is fully phased-in, the department shall summarize provider reported information and submit it to the legislature. The department's summary must include a comparison between the funding provided to support wages under the medicaid payment methodology for occupations reported by the providers and the corresponding prevailing wages paid by contracted assisted living providers.

(b) The stakeholder work group must consist of the assistant secretary of the department or the assistant secretary's appointed designee; one representative from each of two associations in Washington representing assisted living communities; and the long-term care ombuds or the long-term care ombuds' designee.

(c) The report must be based on the following criteria:

(i) The reporting requirement may not be administratively burdensome to either the providers or the department;

(ii) The stakeholders must reach majority consensus on the type of data reported;

(iii) A data use agreement must be developed and included in the reporting process to protect the identity of individual assisted living providers and the identity of employees in the wage categories;

(iv) The design may be limited to a survey sample, to providers who meet certain medicaid occupancy thresholds, or both;

(v) The timeline and frequency for reporting must be agreed to by majority consensus; and

(vi) The data reported must be validated through an agreed upon attestation process with supporting documentation determined by majority consensus.

(2) The department shall provide a summary to the legislature of discharge regulations and notification requirements for assisted living providers by December 30, 2022. Thereafter, the department shall regularly review and report on the impact of RCW 74.39A.032(1) on medicaid utilization and access to assisted living.

**--- END ---**