ENGROSSED HOUSE BILL 2357

Chapter 570, Laws of 2009

61st Legislature
2009 Regular Session

NURSING FACILITY MEDICAID PAYMENTS

EFFECTIVE DATE: 05/19/09

Passed by the House April 26, 2009
Yeas 95  Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 26, 2009
Yeas 47  Nays 0

BRAD OWEN
President of the Senate

Approved May 19, 2009, 4:02 p.m.

CERTIFICATE
I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED HOUSE BILL 2357 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

FILED
May 20, 2009

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
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; amending RCW 74.46.431 and 74.46.485; and declaring an emergency.

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

Sec. 1. RCW 74.46.431 and 2008 c 263 s 2 are each amended to read as follows:

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

(2) Component rate allocations in therapy care, support services, variable return, operations, property, and financing allowance for essential community providers as defined in this chapter shall be based upon a minimum facility occupancy of eighty-five percent of licensed
1 beds, regardless of how many beds are set up or in use. For all
2 facilities other than essential community providers, effective July 1,
3 2001, component rate allocations in direct care, therapy care, support
4 services, and variable return shall be based upon a minimum facility
5 occupancy of eighty-five percent of licensed beds. For all facilities
6 other than essential community providers, effective July 1, 2002, the
7 component rate allocations in operations, property, and financing
8 allowance shall be based upon a minimum facility occupancy of ninety
9 percent of licensed beds, regardless of how many beds are set up or in
10 use. For all facilities, effective July 1, 2006, the component rate
11 allocation in direct care shall be based upon actual facility
12 occupancy. The median cost limits used to set component rate
13 allocations shall be based on the applicable minimum occupancy
14 percentage. In determining each facility's therapy care component rate
15 allocation under RCW 74.46.511, the department shall apply the
16 applicable minimum facility occupancy adjustment before creating the
17 array of facilities' adjusted therapy costs per adjusted resident day.
18 In determining each facility's support services component rate
19 allocation under RCW 74.46.515(3), the department shall apply the
20 applicable minimum facility occupancy adjustment before creating the
21 array of facilities' adjusted support services costs per adjusted
22 resident day. In determining each facility's operations component rate
23 allocation under RCW 74.46.521(3), the department shall apply the
24 minimum facility occupancy adjustment before creating the array of
25 facilities' adjusted general operations costs per adjusted resident
26 day.

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

(4)(a) Direct care component rate allocations shall be established
34 using adjusted cost report data covering at least six months. Adjusted
35 cost report data from 1996 will be used for October 1, 1998, through
36 June 30, 2001, direct care component rate allocations; adjusted cost
37 report data from 1999 will be used for July 1, 2001, through June 30,
38 2006, direct care component rate allocations. Adjusted cost report
data from 2003 will be used for July 1, 2006, through June 30, 2007, direct care component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, direct care component rate allocations. Effective July 1, 2009, the direct care component rate allocation shall be rebased biennially, and thereafter for each odd-numbered year beginning July 1st, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

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

(c) Direct care component rate allocations based on 1999 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

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

(e) Direct care component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be
compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the therapy care component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the therapy care component rate allocation established in accordance with this chapter.

(5)(a) Therapy care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, therapy care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2005, therapy care component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, through June 30, 2007, therapy care component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, therapy care component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the therapy care component rate allocation shall be cost rebased biennially, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

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

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

(b) Support services component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the support services component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the support services component rate allocation established in accordance with this chapter.

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

(b) Operations component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the operations component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the operations component rate allocation established in accordance with this chapter. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose operations component rate is set equal to their adjusted June 30, 2006, rate, as provided in RCW 74.46.521(4).

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

(9) Total payment rates under the nursing facility medicaid payment system shall not exceed facility rates charged to the general public for comparable services.
(10) Medicaid contractors shall pay to all facility staff a minimum wage of the greater of the state minimum wage or the federal minimum wage.

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

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

(13) Effective July 1, 2001, Medicaid rates shall continue to be revised downward in all components, in accordance with department rules, for facilities converting banked beds to active service under chapter 70.38 RCW, by using the facility's increased licensed bed capacity to recalculate minimum occupancy for rate setting. However, for facilities other than essential community providers which bank beds under chapter 70.38 RCW, after May 25, 2001, Medicaid rates shall be revised upward, in accordance with department rules, in direct care, therapy care, support services, and variable return components only, by using the facility's decreased licensed bed capacity to recalculate minimum occupancy for rate setting, but no upward revision shall be made to operations, property, or financing allowance component rates. The direct care component rate allocation shall be adjusted, without using the minimum occupancy assumption, for facilities that convert banked beds to active service, under chapter 70.38 RCW, beginning on July 1, 2006. Effective July 1, 2007, component rate allocations for
1 direct care shall be based on actual patient days regardless of whether
2 a facility has converted banked beds to active service.
3
4 (14) Facilities obtaining a certificate of need or a certificate of
5 need exemption under chapter 70.38 RCW after June 30, 2001, must have
6 a certificate of capital authorization in order for (a) the
depreciation resulting from the capitalized addition to be included in
7 calculation of the facility's property component rate allocation; and
8 (b) the net invested funds associated with the capitalized addition to
9 be included in calculation of the facility's financing allowance rate
allocation.

Sec. 2. RCW 74.46.485 and 1998 c 322 s 22 are each amended to read
as follows:
(1) The department shall:
 (a) Employ the resource utilization group III case mix
classification methodology. The department shall use the forty-four
group index maximizing model for the resource utilization group III
grouper version 5.10, but the department may revise or update the
classification methodology to reflect advances or refinements in
resident assessment or classification, subject to federal requirements;
and
 (b) Implement minimum data set 3.0 under the authority of this
section and RCW 74.46.431(3). The department must notify nursing home
contractors twenty-eight days in advance the date of implementation of
the minimum data set 3.0. In the notification, the department must
identify for all quarterly rate settings following the date of minimum
data set 3.0 implementation a previously established quarterly case mix
adjustment established for the quarterly rate settings that will be
used for quarterly case mix calculations in direct care until minimum
data set 3.0 is fully implemented. After the department has fully
implemented minimum data set 3.0, it must adjust any quarter in which
it used the previously established quarterly case mix adjustment using
the new minimum data set 3.0 data.

 (2) A default case mix group shall be established for cases in
which the resident dies or is discharged for any purpose prior to
completion of the resident's initial assessment. The default case mix
group and case mix weight for these cases shall be designated by the
department.
(3) A default case mix group may also be established for cases in which there is an untimely assessment for the resident. The default case mix group and case mix weight for these cases shall be designated by the department.

**NEW SECTION. Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House April 26, 2009.
Passed by the Senate April 26, 2009.
Approved by the Governor May 19, 2009.
Filed in Office of Secretary of State May 20, 2009.