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**SENATE BILL 6337**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senators Van De Wege, Cleveland, King, Rivers, Palumbo, and Conway

AN ACT Relating to updating the medicaid payment methodology for contracted assisted living, adult residential care, and enhanced adult residential care; amending RCW 74.39A.030; adding a new section to chapter 74.39A RCW; and creating new sections.

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

NEW SECTION. **Sec.**  (1) The legislature recognizes that Washington state has done an exemplary service for its citizens by expanding long-term care options for home and community-based services. Thousands of vulnerable low-income adults and seniors that would otherwise be in nursing facilities are able to receive the care they need in their own home, an assisted living unit, or an adult family home located near their family and friends, religious groups or other affiliations, and the neighborhoods they are familiar with. The legislature also recognizes that within the next ten years, the number of Washingtonians age seventy-one and older will grow by approximately sixty-three percent and within the next twenty-three years, this population will be about one hundred twenty percent of what it is today. In order to maintain and grow the current level of cost-effective options for long-term care, it is critical to update state policies including provider payment rates to ensure the availability of enrolled providers is sufficient to serve the number of beneficiaries who wish to remain within geographic proximity to their home community.

(2) The legislature intends to replace the outdated payment system with a new methodology that is:

(a) Transparent and understandable to the providers and the public;

(b) Aligns payments to client acuity and contractual requirements; and

(c) Is supported by relevant, verifiable, and independent data to the extent possible.

**Sec.**  RCW 74.39A.030 and 2012 c 10 s 66 are each amended to read as follows:

(1) To the extent of available funding, the department shall expand cost-effective options for home and community services for consumers for whom the state participates in the cost of their care.

(2) In expanding home and community services, the department shall: (a) Take full advantage of federal funding available under Title XVIII and Title XIX of the federal social security act, including home health, adult day care, waiver options, and state plan services; and (b) be authorized to use funds available under its community options program entry system waiver granted under section 1915(c) of the federal social security act to expand the availability of in-home, adult residential care, adult family homes, enhanced adult residential care, and assisted living services. By June 30, 1997, the department shall undertake to reduce the nursing home medicaid census by at least one thousand six hundred by assisting individuals who would otherwise require nursing facility services to obtain services of their choice, including assisted living services, enhanced adult residential care, and other home and community services. If a resident, or his or her legal representative, objects to a discharge decision initiated by the department, the resident shall not be discharged if the resident has been assessed and determined to require nursing facility services. In contracting with nursing homes and assisted living facilities for enhanced adult residential care placements, the department shall not require, by contract or through other means, structural modifications to existing building construction.

(3)(a) The department shall by rule establish payment rates for home and community services that support the provision of cost-effective care. Beginning July 1, 2019, the department shall adopt a data-driven medicaid payment methodology as specified in section 3 of this act for contracted assisted living, adult residential care, and enhanced adult residential care. In the event of any conflict between any such rule and a collective bargaining agreement entered into under RCW 74.39A.270 and 74.39A.300, the collective bargaining agreement prevails.

(b) The department may authorize an enhanced adult residential care rate for nursing homes that temporarily or permanently convert their bed use for the purpose of providing enhanced adult residential care under chapter 70.38 RCW, when the department determines that payment of an enhanced rate is cost-effective and necessary to foster expansion of contracted enhanced adult residential care services. As an incentive for nursing homes to permanently convert a portion of its nursing home bed capacity for the purpose of providing enhanced adult residential care, the department may authorize a supplemental add-on to the enhanced adult residential care rate.

(c) The department may authorize a supplemental assisted living services rate for up to four years for facilities that convert from nursing home use and do not retain rights to the converted nursing home beds under chapter 70.38 RCW, if the department determines that payment of a supplemental rate is cost-effective and necessary to foster expansion of contracted assisted living services.

NEW SECTION. **Sec.**  A new section is added to chapter 74.39A RCW 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. 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 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.

NEW SECTION. **Sec.**  By October 30, 2018, the department of social and health services shall review physical plant contract requirements for each residential care setting and determine if adjustments to the room and board component are necessary in order to reflect the relative differences in costs related to shelter and food according to each setting. The department shall include in its review the average level of client resources available by populations served within each care setting and evaluate any impacts to the state general fund for lowering or raising the room and board standards according to each service setting's requirements.

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