
Appropriations Committee

HB 2328

Brief Description: Concerning nursing facilities.

Sponsors: Representatives Cody, Schmick, Harris, Kilduff, Leavitt, Wylie and Tharinger; by request of Department of Social and Health Services.

Brief Summary of Bill

- Modifies the Medicaid rate methodology for nursing facilities by rebasing rates on an annual basis rather than every other year, effective July 1, 2021.
- Authorizes a one-time inflationary adjustment to rates in FY 2021, using the 24-month consumer-price index for all urban consumers.
- Requires the Department of Social and Health Services to conduct an analysis of the necessity of regular inflationary adjustments and report to the Legislature by December 1, 2020.
- Modifies the exception process for nursing facilities subject to the 24/7 registered nurse coverage requirement.
- Updates nursing facility inspection standards for consistency with federal regulations.

Hearing Date: 1/23/20

Staff: Mary Mulholland (786-7391).

Background:

Washington's Medicaid program includes long-term care assistance and services provided to low-income individuals. It is administered by the state in compliance with federal laws and regulations and is jointly financed by the federal and state government. Clients may be served in their own homes, in community residential settings, or in skilled nursing facilities (nursing facilities).

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.

There are approximately 200 nursing facilities licensed in Washington to serve about 9,400 Medicaid residents on average per month. Nursing facilities are licensed by the Department of Social and Health Services (DSHS) and provide 24-hour supervised nursing care, personal care, therapies, nutrition management, organized activities, social services, laundry services, and room and board to three or more residents. The Medicaid nursing home payment system is administered by the DSHS. The Medicaid rates in Washington are unique to each facility and reflect the client acuity of each facility's residents.

Nursing facility rate methodology

In 2015, the Legislature adopted a new system for establishing nursing facility payment rates, effective July 1, 2016. The system consists of three primary components: direct care, indirect care, and capital. The direct care component represents nursing and related care provided to residents, including food, laundry, and dietary services. The indirect care rate component includes administrative expenses, maintenance costs, tax reimbursements, and housekeeping services. Rates are based on cost reports submitted by nursing facilities to the DSHS at the end of each calendar year.

The direct and indirect care rate components are rebased in odd-numbered state fiscal years using cost reports submitted by nursing facilities for the period two calendar years previous. For example, rates will be rebased in fiscal year (FY) 2021 using calendar year 2018 cost reports. These rates will remain in effect through FY 2022 until rates are rebased again in FY 2023 using calendar year 2020 cost reports.

If, after rebasing, the percentage increase in the statewide average daily rate is less than the average rate of inflation, as determined by the skilled nursing facility market basket index published by the Centers for Medicare & Medicaid Services (CMS), the DSHS is authorized to further increase rates to match the average rate of inflation. For example, if the DSHS saw a 2.0 percent growth in direct and indirect care costs but a 4.8 percent rate of inflation, it would be authorized to increase the rate by an additional 2.8 percent. The DSHS has never been in a situation to exercise this authority. While this methodology allows the DSHS to ensure that rates at least match the current rate of inflation, it does not allow the added step of bringing costs from the cost report year up to the current year's dollars.

Registered nurse coverage

In 2015, the Legislature established a minimum registered nurse (RN) staffing requirement for nursing facilities designated as large, nonessential community providers. In this context, large, nonessential community providers are defined as nursing facilities that are not the only facilities within a commuting distance radius of at least 40 minutes by car, and that have more than 60 licensed beds, regardless of how many beds are set up or in use. Such facilities must have a RN on duty directly supervising resident care 24-hours a day, seven days per week.

The Legislature tasked the DSHS with convening a stakeholder work group to propose modifications to the new nursing facility rate methodology and minimum staffing standards. In its report submitted in January 2016, the work group expressed concerns that some providers subject to the RN coverage requirement would have difficulty locating and hiring enough RNs to

meet the requirement. As a result, the work group recommended a limited exceptions process, which was adopted by the Legislature in 2016.

Under the limited exception process, providers subject to the RN requirement may apply for an exception if they can demonstrate a good-faith effort to hire a RN for the last eight hours of required coverage per day. In granting an exception, the DSHS considers the wages and benefits offered by the provider, and the availability of RNs in the provider's geographic area. Exceptions last for one year and may be renewed for up to three years. Another stakeholder work group, along with the DSHS, was required to review the exception process after June 30, 2019, to determine if the exceptions are still necessary. This group met in the summer and fall of 2019.

Inspection standards

The DSHS is responsible for conducting unannounced inspections of nursing facilities periodically prior to license renewal.

Regulations issued by the CMS outline standards for surveying nursing facilities for compliance with state and federal regulations. The CMS regulations include requirements that the surveying state agency conduct an unannounced standard survey of each nursing facility no less than 15 months after the previous standard survey, when necessary after reviewing complaint allegations, and when a facility is identified as having provided substandard quality of care.

Summary of Bill:

Nursing facility rate methodology

Annual rate rebase

The direct and indirect care rate components must be rebased every year, rather than every other year, effective July 1, 2020.

Inflation adjustment

A one-time inflation adjustment must be made in FY 2021 using a 24-month consumer price index for all urban consumers, as published by the federal Bureau of Labor Statistics. To determine the necessity of regular inflationary adjustments, the DSHS must review rates paid in 2017, 2018, and 2019 in comparison with costs reported by nursing facilities for the same years, and report its findings to the Legislature by December 1, 2020.

The DSHS authority to increase rates by the difference between the percentage increase after rebasing and the average rate of inflation for skilled nursing facilities is removed.

Registered nurse coverage

The exceptions process for providers subject to the 24/7 RN coverage requirement is modified in response to the deliberations of the work group that met in 2019. In granting an exception, DSHS must consider the competitiveness of the provider's wages and benefits compared to other nursing facilities in comparable areas of the state, as well as the provider's recruitment and retention efforts.

No later than August 1, 2023, and every three years thereafter, the DSHS and a stakeholder work group must review the enforcement and citation actions taken against providers that received an exception compared to those without an exception. In its review, the group must also compare referrals by the DSHS to the state Long-Term Care Ombudsman, who responds to complaints raised by nursing facility residents. A report including the findings of these comparisons, along with a recommendation as to whether the exception process should continue, is due to the Legislature by December 1st of each year in which the review is completed.

Inspection standards

Rather than conducting unannounced inspections prior to license renewal, the DSHS must conduct such inspections periodically and in compliance with federal regulations.

Appropriation: None.

Fiscal Note: Requested on January 14, 2020.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.