

SENATE BILL REPORT

SB 6629

As Reported By Senate Committee On:
Ways & Means, February 12, 2008

Title: An act relating to making clarifications to the nursing facility medicaid payment system in relation to the use of minimum occupancy in setting cost limits and application of the statewide average payment rate specified in the biennial appropriations act.

Brief Description: Making clarifications to the nursing facility medicaid payment system in relation to the use of minimum occupancy in setting cost limits and application of the statewide average payment rate specified in the biennial appropriations act.

Sponsors: Senators Franklin and Prentice; by request of Department of Social and Health Services.

Brief History:

Committee Activity: Ways & Means: 1/28/08, 2/12/08 [DP, w/oRec].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Hobbs, Parlette, Rasmussen, Regala, Roach, Rockefeller and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senator Honeyford.

Staff: Chelsea Buchanan (786-7446)

Background: There are about 230 nursing home facilities in Washington providing long-term care services to approximately 11,115 Medicaid clients. The nursing facility payment system was first enacted into statute in 1980. Washington State is one of only a few states with details of the payment system in statute. The system is administered by the Department of Social and Health Services (Department). If the statute needs clarification, this often cannot be done through the rule-making process, and the Department must submit request legislation.

Nursing Facility Payment System and Median Cost Limits: The current payment system consists of seven different rate components: direct care, therapy care, support services, operations, property, financing allowance, and variable return.

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.

A "minimum occupancy adjustment" is applied to all of the rate components except direct care. Aside from specific cases where a "hold harmless" applies, if a facility does not have more than a certain percentage of its beds filled, the rates are adjusted downward.

In several areas, median cost limits (MCLs), or caps, are applied to costs used to calculate the level of reimbursement available to a nursing facility. (For example, the MCL for "operations" is 100 percent of median, meaning that facilities whose "operations" costs are above the median relative to their peers have their reimbursement limited to the median level.) In 2006 the Legislature amended the payment statute with a variety of changes that increased the level of reimbursement for many providers. A "hold harmless" to operations costs and direct care costs is included for certain providers who would not have had their reimbursement increased. Included in this amendment was a clarification that minimum occupancy adjustments are applied to operations' costs prior to the calculation of median cost limits or MCLs. As the bill did not make changes to support services or therapy care, these sections were not amended. Existing statute defines these rate component allocations as including a minimum occupancy adjustment.

Nursing Facility Payment – Limits on Rates Set by the Operating Budget Act: The biennial operating budget act sets limits on overall nursing facility reimbursement. First, it appropriates funds based on expected caseload and average daily reimbursement rates. Second, it specifies an expected average daily rate commonly known as the "budget dial."

If the Department determines that actual average daily rates paid to nursing facilities over the course of the year will be greater than the budget dial, then the Department must reduce the rates paid to all nursing facilities to make sure that this does not occur. (Alternately, the Legislature can appropriate additional funding to prevent a reduction in rates.)

Appeals of Rates for Prior Years & Retroactive Payment: Nursing facilities have the right to appeal their reimbursement rate, which can result in hearings, lawsuits, or settlements. Sometimes these legal actions result in retroactive payment to the nursing facility for prior state fiscal years.

Summary of Bill: The bill addresses two issues:

- 1) The bill clarifies that the minimum occupancy adjustments are applied prior to the calculation of median cost limits for support services and therapy care as well as for operations; and
- 2) The bill clarifies that any retroactive payments to nursing homes for a prior fiscal year may not exceed the "budget dial" for that same fiscal year.

The Legislature intends that 2008 enactment of these sections is meant to be curative, remedial, and retroactively applied to July 1, 1998.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill clarifies the statute to reflect the current practice in setting nursing home rates. Since Washington's nursing home rates system is in statute, which is rare, clarifications must be sought with new legislation. If the state is required to make retroactive payment in excess of the limits the budget set out in the "budget dial," then the federal government may not pay matching funds. Without this bill, future nursing home costs could increase.

CON: It's not fair to change the rules in the middle of the game; this bill is unconstitutional. This matter is currently before Thurston County Superior Court. It's not fair to have the "budget dial" be a cap on reimbursement, because it's just a projection.

Persons Testifying: PRO: Senator Rosa Franklin, prime sponsor; Kathy Marshall, Department of Social and Health Services, Aging and Disability Services Administration.

CON: Robin Dale, Lane Powell, Washington Health Care Association; Deb Murphy, Washington Association of Housing and Services to the Aging.