

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6629

Chapter 263, Laws of 2008

60th Legislature
2008 Regular Session

MEDICAID--NURSING FACILITY PAYMENT SYSTEM--CLARIFICATIONS

EFFECTIVE DATE: 06/12/08

Passed by the Senate March 11, 2008
YEAS 49 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 12, 2008
YEAS 97 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved March 31, 2008, 11:29 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6629** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 1, 2008

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6629

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By Senators Franklin and Prentice; by request of Department of Social and Health Services

Read first time 01/21/08. Referred to Committee on Ways & Means.

1 AN ACT Relating to making clarifications to the nursing facility
2 medicaid payment system in relation to the use of minimum occupancy in
3 setting cost limits and application of the statewide average payment
4 rate specified in the biennial appropriations act; amending RCW
5 74.46.421, 74.46.431, 74.46.511, and 74.46.515; and creating a new
6 section.

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

8 **Sec. 1.** RCW 74.46.421 and 2001 1st sp.s. c 8 s 4 are each amended
9 to read as follows:

10 (1) The purpose of part E of this chapter is to determine nursing
11 facility medicaid payment rates that, in the aggregate for all
12 participating nursing facilities, are in accordance with the biennial
13 appropriations act.

14 (2)(a) The department shall use the nursing facility medicaid
15 payment rate methodologies described in this chapter to determine
16 initial component rate allocations for each medicaid nursing facility.

17 (b) The initial component rate allocations shall be subject to
18 adjustment as provided in this section in order to assure that the

1 statewide average payment rate to nursing facilities is less than or
2 equal to the statewide average payment rate specified in the biennial
3 appropriations act.

4 (3) Nothing in this chapter shall be construed as creating a legal
5 right or entitlement to any payment that (a) has not been adjusted
6 under this section or (b) would cause the statewide average payment
7 rate to exceed the statewide average payment rate specified in the
8 biennial appropriations act.

9 (4)(a) The statewide average payment rate for any state fiscal year
10 under the nursing facility payment system, weighted by patient days,
11 shall not exceed the annual statewide weighted average nursing facility
12 payment rate identified for that fiscal year in the biennial
13 appropriations act.

14 (b) If the department determines that the weighted average nursing
15 facility payment rate calculated in accordance with this chapter is
16 likely to exceed the weighted average nursing facility payment rate
17 identified in the biennial appropriations act, then the department
18 shall adjust all nursing facility payment rates proportional to the
19 amount by which the weighted average rate allocations would otherwise
20 exceed the budgeted rate amount. Any such adjustments for the current
21 fiscal year shall only be made prospectively, not retrospectively, and
22 shall be applied proportionately to each component rate allocation for
23 each facility.

24 (c) If any final order or final judgment, including a final order
25 or final judgment resulting from an adjudicative proceeding or judicial
26 review permitted by chapter 34.05 RCW, would result in an increase to
27 a nursing facility's payment rate for a prior fiscal year or years, the
28 department shall consider whether the increased rate for that facility
29 would result in the statewide weighted average payment rate for all
30 facilities for such fiscal year or years to be exceeded. If the
31 increased rate would result in the statewide average payment rate for
32 such year or years being exceeded, the department shall increase that
33 nursing facility's payment rate to meet the final order or judgment
34 only to the extent that it does not result in an increase to the
35 statewide weighted average payment rate for all facilities.

36 **Sec. 2.** RCW 74.46.431 and 2007 c 508 s 2 are each amended to read
37 as follows:

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

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

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

7 (4)(a) Direct care component rate allocations shall be established
8 using adjusted cost report data covering at least six months. Adjusted
9 cost report data from 1996 will be used for October 1, 1998, through
10 June 30, 2001, direct care component rate allocations; adjusted cost
11 report data from 1999 will be used for July 1, 2001, through June 30,
12 2006, direct care component rate allocations. Adjusted cost report
13 data from 2003 will be used for July 1, 2006, through June 30, 2007,
14 direct care component rate allocations. Adjusted cost report data from
15 2005 will be used for July 1, 2007, through June 30, 2009, direct care
16 component rate allocations. Effective July 1, 2009, the direct care
17 component rate allocation shall be rebased biennially, and thereafter
18 for each odd-numbered year beginning July 1st, using the adjusted cost
19 report data for the calendar year two years immediately preceding the
20 rate rebase period, so that adjusted cost report data for calendar year
21 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

22 (b) Direct care component rate allocations based on 1996 cost
23 report data shall be adjusted annually for economic trends and
24 conditions by a factor or factors defined in the biennial
25 appropriations act. A different economic trends and conditions
26 adjustment factor or factors may be defined in the biennial
27 appropriations act for facilities whose direct care component rate is
28 set equal to their adjusted June 30, 1998, rate, as provided in RCW
29 74.46.506(5)(i).

30 (c) Direct care component rate allocations based on 1999 cost
31 report data shall be adjusted annually for economic trends and
32 conditions by a factor or factors defined in the biennial
33 appropriations act. A different economic trends and conditions
34 adjustment factor or factors may be defined in the biennial
35 appropriations act for facilities whose direct care component rate is
36 set equal to their adjusted June 30, 1998, rate, as provided in RCW
37 74.46.506(5)(i).

1 (d) Direct care component rate allocations based on 2003 cost
2 report data shall be adjusted annually for economic trends and
3 conditions by a factor or factors defined in the biennial
4 appropriations act. A different economic trends and conditions
5 adjustment factor or factors may be defined in the biennial
6 appropriations act for facilities whose direct care component rate is
7 set equal to their adjusted June 30, 2006, rate, as provided in RCW
8 74.46.506(5)(i).

9 (e) Direct care component rate allocations shall be adjusted
10 annually for economic trends and conditions by a factor or factors
11 defined in the biennial appropriations act.

12 (5)(a) Therapy care component rate allocations shall be established
13 using adjusted cost report data covering at least six months. Adjusted
14 cost report data from 1996 will be used for October 1, 1998, through
15 June 30, 2001, therapy care component rate allocations; adjusted cost
16 report data from 1999 will be used for July 1, 2001, through June 30,
17 2005, therapy care component rate allocations. Adjusted cost report
18 data from 1999 will continue to be used for July 1, 2005, through June
19 30, 2007, therapy care component rate allocations. Adjusted cost
20 report data from 2005 will be used for July 1, 2007, through June 30,
21 2009, therapy care component rate allocations. Effective July 1, 2009,
22 and thereafter for each odd-numbered year beginning July 1st, the
23 therapy care component rate allocation shall be cost rebased
24 biennially, using the adjusted cost report data for the calendar year
25 two years immediately preceding the rate rebase period, so that
26 adjusted cost report data for calendar year 2007 is used for July 1,
27 2009, through June 30, 2011, and so forth.

28 (b) Therapy care component rate allocations shall be adjusted
29 annually for economic trends and conditions by a factor or factors
30 defined in the biennial appropriations act.

31 (6)(a) Support services component rate allocations shall be
32 established using adjusted cost report data covering at least six
33 months. Adjusted cost report data from 1996 shall be used for October
34 1, 1998, through June 30, 2001, support services component rate
35 allocations; adjusted cost report data from 1999 shall be used for July
36 1, 2001, through June 30, 2005, support services component rate
37 allocations. Adjusted cost report data from 1999 will continue to be
38 used for July 1, 2005, through June 30, 2007, support services

1 component rate allocations. Adjusted cost report data from 2005 will
2 be used for July 1, 2007, through June 30, 2009, support services
3 component rate allocations. Effective July 1, 2009, and thereafter for
4 each odd-numbered year beginning July 1st, the support services
5 component rate allocation shall be cost rebased biennially, using the
6 adjusted cost report data for the calendar year two years immediately
7 preceding the rate rebase period, so that adjusted cost report data for
8 calendar year 2007 is used for July 1, 2009, through June 30, 2011, and
9 so forth.

10 (b) Support services component rate allocations shall be adjusted
11 annually for economic trends and conditions by a factor or factors
12 defined in the biennial appropriations act.

13 (7)(a) Operations component rate allocations shall be established
14 using adjusted cost report data covering at least six months. Adjusted
15 cost report data from 1996 shall be used for October 1, 1998, through
16 June 30, 2001, operations component rate allocations; adjusted cost
17 report data from 1999 shall be used for July 1, 2001, through June 30,
18 2006, operations component rate allocations. Adjusted cost report data
19 from 2003 will be used for July 1, 2006, through June 30, 2007,
20 operations component rate allocations. Adjusted cost report data from
21 2005 will be used for July 1, 2007, through June 30, 2009, operations
22 component rate allocations. Effective July 1, 2009, and thereafter for
23 each odd-numbered year beginning July 1st, the operations component
24 rate allocation shall be cost rebased biennially, using the adjusted
25 cost report data for the calendar year two years immediately preceding
26 the rate rebase period, so that adjusted cost report data for calendar
27 year 2007 is used for July 1, 2009, through June 30, 2011, and so
28 forth.

29 (b) Operations component rate allocations shall be adjusted
30 annually for economic trends and conditions by a factor or factors
31 defined in the biennial appropriations act. A different economic
32 trends and conditions adjustment factor or factors may be defined in
33 the biennial appropriations act for facilities whose operations
34 component rate is set equal to their adjusted June 30, 2006, rate, as
35 provided in RCW 74.46.521(4).

36 (8) For July 1, 1998, through September 30, 1998, a facility's
37 property and return on investment component rates shall be the
38 facility's June 30, 1998, property and return on investment component

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

5 (9) Total payment rates under the nursing facility medicaid payment
6 system shall not exceed facility rates charged to the general public
7 for comparable services.

8 (10) Medicaid contractors shall pay to all facility staff a minimum
9 wage of the greater of the state minimum wage or the federal minimum
10 wage.

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

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

29 (13) Effective July 1, 2001, medicaid rates shall continue to be
30 revised downward in all components, in accordance with department
31 rules, for facilities converting banked beds to active service under
32 chapter 70.38 RCW, by using the facility's increased licensed bed
33 capacity to recalculate minimum occupancy for rate setting. However,
34 for facilities other than essential community providers which bank beds
35 under chapter 70.38 RCW, after May 25, 2001, medicaid rates shall be
36 revised upward, in accordance with department rules, in direct care,
37 therapy care, support services, and variable return components only, by
38 using the facility's decreased licensed bed capacity to recalculate

1 minimum occupancy for rate setting, but no upward revision shall be
2 made to operations, property, or financing allowance component rates.
3 The direct care component rate allocation shall be adjusted, without
4 using the minimum occupancy assumption, for facilities that convert
5 banked beds to active service, under chapter 70.38 RCW, beginning on
6 July 1, 2006. Effective July 1, 2007, component rate allocations for
7 direct care shall be based on actual patient days regardless of whether
8 a facility has converted banked beds to active service.

9 (14) Facilities obtaining a certificate of need or a certificate of
10 need exemption under chapter 70.38 RCW after June 30, 2001, must have
11 a certificate of capital authorization in order for (a) the
12 depreciation resulting from the capitalized addition to be included in
13 calculation of the facility's property component rate allocation; and
14 (b) the net invested funds associated with the capitalized addition to
15 be included in calculation of the facility's financing allowance rate
16 allocation.

17 **Sec. 3.** RCW 74.46.511 and 2007 c 508 s 4 are each amended to read
18 as follows:

19 (1) The therapy care component rate allocation corresponds to the
20 provision of medicaid one-on-one therapy provided by a qualified
21 therapist as defined in this chapter, including therapy supplies and
22 therapy consultation, for one day for one medicaid resident of a
23 nursing facility. The therapy care component rate allocation for
24 October 1, 1998, through June 30, 2001, shall be based on adjusted
25 therapy costs and days from calendar year 1996. The therapy component
26 rate allocation for July 1, 2001, through June 30, 2007, shall be based
27 on adjusted therapy costs and days from calendar year 1999. Effective
28 July 1, 2007, the therapy care component rate allocation shall be based
29 on adjusted therapy costs and days as described in RCW 74.46.431(5).
30 The therapy care component rate shall be adjusted for economic trends
31 and conditions as specified in RCW 74.46.431(5), and shall be
32 determined in accordance with this section. In determining each
33 facility's therapy care component rate allocation, the department shall
34 apply the applicable minimum facility occupancy adjustment before
35 creating the array of facilities' adjusted therapy care costs per
36 adjusted resident day.

1 (2) In rebasing, as provided in RCW 74.46.431(5)(a), the department
2 shall take from the cost reports of facilities the following reported
3 information:

4 (a) Direct one-on-one therapy charges for all residents by payer
5 including charges for supplies;

6 (b) The total units or modules of therapy care for all residents by
7 type of therapy provided, for example, speech or physical. A unit or
8 module of therapy care is considered to be fifteen minutes of one-on-
9 one therapy provided by a qualified therapist or support personnel; and

10 (c) Therapy consulting expenses for all residents.

11 (3) The department shall determine for all residents the total cost
12 per unit of therapy for each type of therapy by dividing the total
13 adjusted one-on-one therapy expense for each type by the total units
14 provided for that therapy type.

15 (4) The department shall divide medicaid nursing facilities in this
16 state into two peer groups:

17 (a) Those facilities located within urban counties; and

18 (b) Those located within nonurban counties.

19 The department shall array the facilities in each peer group from
20 highest to lowest based on their total cost per unit of therapy for
21 each therapy type. The department shall determine the median total
22 cost per unit of therapy for each therapy type and add ten percent of
23 median total cost per unit of therapy. The cost per unit of therapy
24 for each therapy type at a nursing facility shall be the lesser of its
25 cost per unit of therapy for each therapy type or the median total cost
26 per unit plus ten percent for each therapy type for its peer group.

27 (5) The department shall calculate each nursing facility's therapy
28 care component rate allocation as follows:

29 (a) To determine the allowable total therapy cost for each therapy
30 type, the allowable cost per unit of therapy for each type of therapy
31 shall be multiplied by the total therapy units for each type of
32 therapy;

33 (b) The medicaid allowable one-on-one therapy expense shall be
34 calculated taking the allowable total therapy cost for each therapy
35 type times the medicaid percent of total therapy charges for each
36 therapy type;

37 (c) The medicaid allowable one-on-one therapy expense for each

1 therapy type shall be divided by total adjusted medicaid days to arrive
2 at the medicaid one-on-one therapy cost per patient day for each
3 therapy type;

4 (d) The medicaid one-on-one therapy cost per patient day for each
5 therapy type shall be multiplied by total adjusted patient days for all
6 residents to calculate the total allowable one-on-one therapy expense.
7 The lesser of the total allowable therapy consultant expense for the
8 therapy type or a reasonable percentage of allowable therapy consultant
9 expense for each therapy type, as established in rule by the
10 department, shall be added to the total allowable one-on-one therapy
11 expense to determine the allowable therapy cost for each therapy type;

12 (e) The allowable therapy cost for each therapy type shall be added
13 together, the sum of which shall be the total allowable therapy expense
14 for the nursing facility;

15 (f) The total allowable therapy expense will be divided by the
16 greater of adjusted total patient days from the cost report on which
17 the therapy expenses were reported, or patient days at eighty-five
18 percent occupancy of licensed beds. The outcome shall be the nursing
19 facility's therapy care component rate allocation.

20 (6) The therapy care component rate allocations calculated in
21 accordance with this section shall be adjusted to the extent necessary
22 to comply with RCW 74.46.421.

23 (7) The therapy care component rate shall be suspended for medicaid
24 residents in qualified nursing facilities designated by the department
25 who are receiving therapy paid by the department outside the facility
26 daily rate under RCW 74.46.508(2).

27 **Sec. 4.** RCW 74.46.515 and 2001 1st sp.s. c 8 s 12 are each amended
28 to read as follows:

29 (1) The support services component rate allocation corresponds to
30 the provision of food, food preparation, dietary, housekeeping, and
31 laundry services for one resident for one day.

32 (2) Beginning October 1, 1998, the department shall determine each
33 medicaid nursing facility's support services component rate allocation
34 using cost report data specified by RCW 74.46.431(6).

35 (3) To determine each facility's support services component rate
36 allocation, the department shall:

1 (a) Array facilities' adjusted support services costs per adjusted
2 resident day, as determined by dividing each facility's total allowable
3 support services costs by its adjusted resident days for the same
4 report period, increased if necessary to a minimum occupancy provided
5 by RCW 74.46.431(2), for each facility from facilities' cost reports
6 from the applicable report year, for facilities located within urban
7 counties, and for those located within nonurban counties and determine
8 the median adjusted cost for each peer group;

9 (b) Set each facility's support services component rate at the
10 lower of the facility's per resident day adjusted support services
11 costs from the applicable cost report period or the adjusted median per
12 resident day support services cost for that facility's peer group,
13 either urban counties or nonurban counties, plus ten percent; and

14 (c) Adjust each facility's support services component rate for
15 economic trends and conditions as provided in RCW 74.46.431(6).

16 (4) The support services component rate allocations calculated in
17 accordance with this section shall be adjusted to the extent necessary
18 to comply with RCW 74.46.421.

19 NEW SECTION. Sec. 5. The legislature clarifies the enactment of
20 chapter 8, Laws of 2001 1st sp. sess. and intends this act be curative,
21 remedial, and retrospectively applicable to July 1, 1998.

Passed by the Senate March 11, 2008.

Passed by the House March 12, 2008.

Approved by the Governor March 31, 2008.

Filed in Office of Secretary of State April 1, 2008.