

CERTIFICATION OF ENROLLMENT

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.

CHRISTINE GREGOIRE

Governor of the State of Washington

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

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2357

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington

61st Legislature

2009 Regular Session

By Representative Cody

1 AN ACT Relating to modifying nursing facility medicaid payments by
2 clarifying legislative intent regarding the statewide weighted average,
3 freezing case mix indices, and revising the use of the economic trends
4 and conditions factor; amending RCW 74.46.431 and 74.46.485; and
5 declaring an emergency.

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

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

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

16 (2) Component rate allocations in therapy care, support services,
17 variable return, operations, property, and financing allowance for
18 essential community providers as defined in this chapter shall be based
19 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.

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

33 (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

1 data from 2003 will be used for July 1, 2006, through June 30, 2007,
2 direct care component rate allocations. Adjusted cost report data from
3 2005 will be used for July 1, 2007, through June 30, 2009, direct care
4 component rate allocations. Effective July 1, 2009, the direct care
5 component rate allocation shall be rebased biennially, and thereafter
6 for each odd-numbered year beginning July 1st, using the adjusted cost
7 report data for the calendar year two years immediately preceding the
8 rate rebase period, so that adjusted cost report data for calendar year
9 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

10 (b) Direct care component rate allocations based on 1996 cost
11 report data shall be adjusted annually for economic trends and
12 conditions by a factor or factors defined in the biennial
13 appropriations act. A different economic trends and conditions
14 adjustment factor or factors may be defined in the biennial
15 appropriations act for facilities whose direct care component rate is
16 set equal to their adjusted June 30, 1998, rate, as provided in RCW
17 74.46.506(5)(i).

18 (c) Direct care component rate allocations based on 1999 cost
19 report data shall be adjusted annually for economic trends and
20 conditions by a factor or factors defined in the biennial
21 appropriations act. A different economic trends and conditions
22 adjustment factor or factors may be defined in the biennial
23 appropriations act for facilities whose direct care component rate is
24 set equal to their adjusted June 30, 1998, rate, as provided in RCW
25 74.46.506(5)(i).

26 (d) Direct care component rate allocations based on 2003 cost
27 report data shall be adjusted annually for economic trends and
28 conditions by a factor or factors defined in the biennial
29 appropriations act. A different economic trends and conditions
30 adjustment factor or factors may be defined in the biennial
31 appropriations act for facilities whose direct care component rate is
32 set equal to their adjusted June 30, 2006, rate, as provided in RCW
33 74.46.506(5)(i).

34 (e) Direct care component rate allocations established in
35 accordance with this chapter shall be adjusted annually for economic
36 trends and conditions by a factor or factors defined in the biennial
37 appropriations act. The economic trends and conditions factor or
38 factors defined in the biennial appropriations act shall not be

1 compounded with the economic trends and conditions factor or factors
2 defined in any other biennial appropriations acts before applying it to
3 the direct care component rate allocation established in accordance
4 with this chapter. When no economic trends and conditions factor or
5 factors for either fiscal year are defined in a biennial appropriations
6 act, no economic trends and conditions factor or factors defined in any
7 earlier biennial appropriations act shall be applied solely or
8 compounded to the direct care component rate allocation established in
9 accordance with this chapter.

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

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

1 compounded to the therapy care component rate allocation established in
2 accordance with this chapter.

3 (6)(a) Support services component rate allocations shall be
4 established using adjusted cost report data covering at least six
5 months. Adjusted cost report data from 1996 shall be used for October
6 1, 1998, through June 30, 2001, support services component rate
7 allocations; adjusted cost report data from 1999 shall be used for July
8 1, 2001, through June 30, 2005, support services component rate
9 allocations. Adjusted cost report data from 1999 will continue to be
10 used for July 1, 2005, through June 30, 2007, support services
11 component rate allocations. Adjusted cost report data from 2005 will
12 be used for July 1, 2007, through June 30, 2009, support services
13 component rate allocations. Effective July 1, 2009, and thereafter for
14 each odd-numbered year beginning July 1st, the support services
15 component rate allocation shall be cost rebased biennially, using the
16 adjusted cost report data for the calendar year two years immediately
17 preceding the rate rebase period, so that adjusted cost report data for
18 calendar year 2007 is used for July 1, 2009, through June 30, 2011, and
19 so forth.

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

34 (7)(a) Operations component rate allocations shall be established
35 using adjusted cost report data covering at least six months. Adjusted
36 cost report data from 1996 shall be used for October 1, 1998, through
37 June 30, 2001, operations component rate allocations; adjusted cost
38 report data from 1999 shall be used for July 1, 2001, through June 30,

1 2006, operations component rate allocations. Adjusted cost report data
2 from 2003 will be used for July 1, 2006, through June 30, 2007,
3 operations component rate allocations. Adjusted cost report data from
4 2005 will be used for July 1, 2007, through June 30, 2009, operations
5 component rate allocations. Effective July 1, 2009, and thereafter for
6 each odd-numbered year beginning July 1st, the operations component
7 rate allocation shall be cost rebased biennially, using the adjusted
8 cost report data for the calendar year two years immediately preceding
9 the rate rebase period, so that adjusted cost report data for calendar
10 year 2007 is used for July 1, 2009, through June 30, 2011, and so
11 forth.

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

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

36 (9) Total payment rates under the nursing facility medicaid payment
37 system shall not exceed facility rates charged to the general public
38 for comparable services.

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

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

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

22 (13) Effective July 1, 2001, medicaid rates shall continue to be
23 revised downward in all components, in accordance with department
24 rules, for facilities converting banked beds to active service under
25 chapter 70.38 RCW, by using the facility's increased licensed bed
26 capacity to recalculate minimum occupancy for rate setting. However,
27 for facilities other than essential community providers which bank beds
28 under chapter 70.38 RCW, after May 25, 2001, medicaid rates shall be
29 revised upward, in accordance with department rules, in direct care,
30 therapy care, support services, and variable return components only, by
31 using the facility's decreased licensed bed capacity to recalculate
32 minimum occupancy for rate setting, but no upward revision shall be
33 made to operations, property, or financing allowance component rates.
34 The direct care component rate allocation shall be adjusted, without
35 using the minimum occupancy assumption, for facilities that convert
36 banked beds to active service, under chapter 70.38 RCW, beginning on
37 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 (14) Facilities obtaining a certificate of need or a certificate of
4 need exemption under chapter 70.38 RCW after June 30, 2001, must have
5 a certificate of capital authorization in order for (a) the
6 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
10 allocation.

11 **Sec. 2.** RCW 74.46.485 and 1998 c 322 s 22 are each amended to read
12 as follows:

13 (1) The department shall:

14 (a) __Employ the resource utilization group III case mix
15 classification methodology. The department shall use the forty-four
16 group index maximizing model for the resource utilization group III
17 grouper version 5.10, but the department may revise or update the
18 classification methodology to reflect advances or refinements in
19 resident assessment or classification, subject to federal requirements;
20 and

21 (b) Implement minimum data set 3.0 under the authority of this
22 section and RCW 74.46.431(3). The department must notify nursing home
23 contractors twenty-eight days in advance the date of implementation of
24 the minimum data set 3.0. In the notification, the department must
25 identify for all quarterly rate settings following the date of minimum
26 data set 3.0 implementation a previously established quarterly case mix
27 adjustment established for the quarterly rate settings that will be
28 used for quarterly case mix calculations in direct care until minimum
29 data set 3.0 is fully implemented. After the department has fully
30 implemented minimum data set 3.0, it must adjust any quarter in which
31 it used the previously established quarterly case mix adjustment using
32 the new minimum data set 3.0 data.

33 (2) A default case mix group shall be established for cases in
34 which the resident dies or is discharged for any purpose prior to
35 completion of the resident's initial assessment. The default case mix
36 group and case mix weight for these cases shall be designated by the
37 department.

1 (3) A default case mix group may also be established for cases in
2 which there is an untimely assessment for the resident. The default
3 case mix group and case mix weight for these cases shall be designated
4 by the department.

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

Passed by the House April 26, 2009.

Passed by the Senate April 26, 2009.

Approved by the Governor May 19, 2009.

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