

HOUSE BILL REPORT

E2SSB 6515

As of Second Reading

Title: An act relating to nursing facilities.

Brief Description: Concerning nursing facilities.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Van De Wege, Randall, Mullet, Takko, Lovelett, Liias, Conway, Hasegawa and Wilson, C.).

Brief History:

Committee Activity:

None.

Brief Summary of Engrossed Second Substitute Bill

- Modifies the Medicaid rate methodology for nursing facilities by rebasing rates on an annual basis rather than every other year, effective July 1, 2020. Adds a one-time early rate rebase effective May 1, 2020, through June 30, 2020.
- Authorizes annual inflationary adjustments for a three-year period from July 1, 2020, through June 30, 2023. Requires the Department of Social and Health Services to analyze the necessity of ongoing inflationary adjustments and report to the Legislature by December 1, 2022.
- Specifies a funding distribution for the inflationary adjustment on the indirect care rate component, based on nursing homes' quality metrics pertaining to emergency department visits for long-stay residents.
- 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.

Staff: Mary Mulholland (786-7391).

Background:

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.

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).

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 2019 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.

The overall nursing facility rate also includes a quality incentive component, currently set at \$3.67 per patient day across nursing facilities.

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, 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.

Rate Rebase.

A one-time rebase of the direct and indirect care rate components must occur beginning May 1, 2020, or the month after the bill is enacted (whichever comes last), through June 30, 2020, using 2018 calendar year cost report information.

Beginning with rates paid on July 1, 2020, the direct and indirect care rate components must be rebased every year, rather than every other year as required under current law. Rates must be based on the most recent adjusted cost report information available. The year of this cost report is known as the base year.

Inflation Adjustments.

Beginning July 1, 2020, and annually through June 30, 2023, the direct and indirect care rate components must be adjusted for inflation from the midpoint of the base year to the beginning of the rate year. The rebase must use the most recent calendar year 12-month average consumer price index for all urban consumers in the medical expenditure category of nursing homes and adult day services as published by the United States Bureau of Labor Statistics.

The inflationary adjustment for the indirect care component must be distributed according to a facility's number of outpatient emergency department visits for long-stay patients as reported by the CMS' five-star quality rating data. The DSHS, in consultation with the Health Care Authority and other stakeholders, must review the impact of the inflationary distribution requirement and report its findings to the Legislature by December 1, 2021.

Beginning July 1, 2023, a facility specific rate add-on equal to the inflationary adjustment that the facility received in FY 2023 for the direct care component must be added to the rate, and the funding provided for the inflationary adjustment for the indirect care component must be annually redistributed based on the facility's number of outpatient emergency department visits for long-stay patients. If any funding is left over following the distribution, it must be applied to the quality incentive component of the rate.

To determine the impacts of annual inflationary adjustments, the DSHS must review rates paid from 2018 to 2021 compared to the costs reported by nursing facilities for the same time period, and must report its findings to the Legislature by December 1, 2022.

Any savings as a result of over-appropriations associated with the rebase for FY 2021 must be reinvested to fund the new methodology.

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, 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 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, DSHS must conduct such inspections periodically and in compliance with federal regulations.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.