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SECOND SUBSTITUTE HOUSE BILL 2359

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State of Washington                      56th Legislature                      2000 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Parlette, Cody, Edmonds, Rockefeller, B. Chandler, Schoesler, Kenney, Conway, McDonald and Van Luven)

Read first time 02/08/2000. Referred to Committee on .

1            AN ACT Relating to the nursing facility payment system; amending  
2 RCW 74.46.020 and 74.46.421; repealing RCW 74.46.908; providing an  
3 effective date; and declaring an emergency.

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

5            **Sec. 1.** RCW 74.46.020 and 1999 c 353 s 1 are each amended to read  
6 as follows:

7            Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9            (1) "Accrual method of accounting" means a method of accounting in  
10 which revenues are reported in the period when they are earned,  
11 regardless of when they are collected, and expenses are reported in the  
12 period in which they are incurred, regardless of when they are paid.

13            (2) "Appraisal" means the process of estimating the fair market  
14 value or reconstructing the historical cost of an asset acquired in a  
15 past period as performed by a professionally designated real estate  
16 appraiser with no pecuniary interest in the property to be appraised.  
17 It includes a systematic, analytic determination and the recording and  
18 analyzing of property facts, rights, investments, and values based on  
19 a personal inspection and inventory of the property.

1 (3) "Arm's-length transaction" means a transaction resulting from  
2 good-faith bargaining between a buyer and seller who are not related  
3 organizations and have adverse positions in the market place. Sales or  
4 exchanges of nursing home facilities among two or more parties in which  
5 all parties subsequently continue to own one or more of the facilities  
6 involved in the transactions shall not be considered as arm's-length  
7 transactions for purposes of this chapter. Sale of a nursing home  
8 facility which is subsequently leased back to the seller within five  
9 years of the date of sale shall not be considered as an arm's-length  
10 transaction for purposes of this chapter.

11 (4) "Assets" means economic resources of the contractor, recognized  
12 and measured in conformity with generally accepted accounting  
13 principles.

14 (5) "Audit" or "department audit" means an examination of the  
15 records of a nursing facility participating in the medicaid payment  
16 system, including but not limited to: The contractor's financial and  
17 statistical records, cost reports and all supporting documentation and  
18 schedules, receivables, and resident trust funds, to be performed as  
19 deemed necessary by the department and according to department rule.

20 (6) "Bad debts" means amounts considered to be uncollectible from  
21 accounts and notes receivable.

22 (7) "Beneficial owner" means:

23 (a) Any person who, directly or indirectly, through any contract,  
24 arrangement, understanding, relationship, or otherwise has or shares:

25 (i) Voting power which includes the power to vote, or to direct the  
26 voting of such ownership interest; and/or

27 (ii) Investment power which includes the power to dispose, or to  
28 direct the disposition of such ownership interest;

29 (b) Any person who, directly or indirectly, creates or uses a  
30 trust, proxy, power of attorney, pooling arrangement, or any other  
31 contract, arrangement, or device with the purpose or effect of  
32 divesting himself or herself of beneficial ownership of an ownership  
33 interest or preventing the vesting of such beneficial ownership as part  
34 of a plan or scheme to evade the reporting requirements of this  
35 chapter;

36 (c) Any person who, subject to (b) of this subsection, has the  
37 right to acquire beneficial ownership of such ownership interest within  
38 sixty days, including but not limited to any right to acquire:

39 (i) Through the exercise of any option, warrant, or right;

1 (ii) Through the conversion of an ownership interest;  
2 (iii) Pursuant to the power to revoke a trust, discretionary  
3 account, or similar arrangement; or  
4 (iv) Pursuant to the automatic termination of a trust,  
5 discretionary account, or similar arrangement;  
6 except that, any person who acquires an ownership interest or power  
7 specified in (c)(i), (ii), or (iii) of this subsection with the purpose  
8 or effect of changing or influencing the control of the contractor, or  
9 in connection with or as a participant in any transaction having such  
10 purpose or effect, immediately upon such acquisition shall be deemed to  
11 be the beneficial owner of the ownership interest which may be acquired  
12 through the exercise or conversion of such ownership interest or power;  
13 (d) Any person who in the ordinary course of business is a pledgee  
14 of ownership interest under a written pledge agreement shall not be  
15 deemed to be the beneficial owner of such pledged ownership interest  
16 until the pledgee has taken all formal steps necessary which are  
17 required to declare a default and determines that the power to vote or  
18 to direct the vote or to dispose or to direct the disposition of such  
19 pledged ownership interest will be exercised; except that:  
20 (i) The pledgee agreement is bona fide and was not entered into  
21 with the purpose nor with the effect of changing or influencing the  
22 control of the contractor, nor in connection with any transaction  
23 having such purpose or effect, including persons meeting the conditions  
24 set forth in (b) of this subsection; and  
25 (ii) The pledgee agreement, prior to default, does not grant to the  
26 pledgee:  
27 (A) The power to vote or to direct the vote of the pledged  
28 ownership interest; or  
29 (B) The power to dispose or direct the disposition of the pledged  
30 ownership interest, other than the grant of such power(s) pursuant to  
31 a pledge agreement under which credit is extended and in which the  
32 pledgee is a broker or dealer.  
33 (8) "Capital portion of the rate" means the sum of the property and  
34 financing allowance rate allocations, as established in part E of this  
35 chapter.  
36 (9) "Capitalization" means the recording of an expenditure as an  
37 asset.

1 (10) "Case mix" means a measure of the intensity of care and  
2 services needed by the residents of a nursing facility or a group of  
3 residents in the facility.

4 (11) "Case mix index" means a number representing the average case  
5 mix of a nursing facility.

6 (12) "Case mix weight" means a numeric score that identifies the  
7 relative resources used by a particular group of a nursing facility's  
8 residents.

9 (13) "Contractor" means a person or entity licensed under chapter  
10 18.51 RCW to operate a medicare and medicaid certified nursing  
11 facility, responsible for operational decisions, and contracting with  
12 the department to provide services to medicaid recipients residing in  
13 the facility.

14 (14) "Default case" means no initial assessment has been completed  
15 for a resident and transmitted to the department by the cut-off date,  
16 or an assessment is otherwise past due for the resident, under state  
17 and federal requirements.

18 (15) "Department" means the department of social and health  
19 services (DSHS) and its employees.

20 (16) "Depreciation" means the systematic distribution of the cost  
21 or other basis of tangible assets, less salvage, over the estimated  
22 useful life of the assets.

23 (17) "Direct care" means nursing care and related care provided to  
24 nursing facility residents. Therapy care shall not be considered part  
25 of direct care.

26 (18) "Direct care supplies" means medical, pharmaceutical, and  
27 other supplies required for the direct care of a nursing facility's  
28 residents.

29 (19) "Entity" means an individual, partnership, corporation,  
30 limited liability company, or any other association of individuals  
31 capable of entering enforceable contracts.

32 (20) "Equity" means the net book value of all tangible and  
33 intangible assets less the recorded value of all liabilities, as  
34 recognized and measured in conformity with generally accepted  
35 accounting principles.

36 (21) "Facility" or "nursing facility" means a nursing home licensed  
37 in accordance with chapter 18.51 RCW, excepting nursing homes certified  
38 as institutions for mental diseases, or that portion of a multiservice  
39 facility licensed as a nursing home, or that portion of a hospital

1 licensed in accordance with chapter 70.41 RCW which operates as a  
2 nursing home.

3 (22) "Fair market value" means the replacement cost of an asset  
4 less observed physical depreciation on the date for which the market  
5 value is being determined.

6 (23) "Financial statements" means statements prepared and presented  
7 in conformity with generally accepted accounting principles including,  
8 but not limited to, balance sheet, statement of operations, statement  
9 of changes in financial position, and related notes.

10 (24) "Generally accepted accounting principles" means accounting  
11 principles approved by the financial accounting standards board (FASB).

12 (25) "Goodwill" means the excess of the price paid for a nursing  
13 facility business over the fair market value of all net identifiable  
14 tangible and intangible assets acquired, as measured in accordance with  
15 generally accepted accounting principles.

16 (26) "Grouper" means a computer software product that groups  
17 individual nursing facility residents into case mix classification  
18 groups based on specific resident assessment data and computer logic.

19 (27) "Historical cost" means the actual cost incurred in acquiring  
20 and preparing an asset for use, including feasibility studies,  
21 architect's fees, and engineering studies.

22 (28) "Imprest fund" means a fund which is regularly replenished in  
23 exactly the amount expended from it.

24 (29) "Joint facility costs" means any costs which represent  
25 resources which benefit more than one facility, or one facility and any  
26 other entity.

27 (30) "Lease agreement" means a contract between two parties for the  
28 possession and use of real or personal property or assets for a  
29 specified period of time in exchange for specified periodic payments.  
30 Elimination (due to any cause other than death or divorce) or addition  
31 of any party to the contract, expiration, or modification of any lease  
32 term in effect on January 1, 1980, or termination of the lease by  
33 either party by any means shall constitute a termination of the lease  
34 agreement. An extension or renewal of a lease agreement, whether or  
35 not pursuant to a renewal provision in the lease agreement, shall be  
36 considered a new lease agreement. A strictly formal change in the  
37 lease agreement which modifies the method, frequency, or manner in  
38 which the lease payments are made, but does not increase the total

1 lease payment obligation of the lessee, shall not be considered  
2 modification of a lease term.

3 (31) "Medical care program" or "medicaid program" means medical  
4 assistance, including nursing care, provided under RCW 74.09.500 or  
5 authorized state medical care services.

6 (32) "Medical care recipient," "medicaid recipient," or "recipient"  
7 means an individual determined eligible by the department for the  
8 services provided under chapter 74.09 RCW.

9 (33) "Minimum data set" means the overall data component of the  
10 resident assessment instrument, indicating the strengths, needs, and  
11 preferences of an individual nursing facility resident.

12 (34) "Net book value" means the historical cost of an asset less  
13 accumulated depreciation.

14 (35) "Net invested funds" means the net book value of tangible  
15 fixed assets employed by a contractor to provide services under the  
16 medical care program, including land, buildings, and equipment as  
17 recognized and measured in conformity with generally accepted  
18 accounting principles, plus an allowance of working capital which shall  
19 be five percent of the product of the per patient day rate multiplied  
20 by the prior calendar year adjusted total patient days of each  
21 contractor.

22 (36) "Noncapital portion of the rate" means the sum of the direct  
23 care, therapy care, operations, support services, and variable return  
24 rate allocations, as established in part E of this chapter.

25 (37) "Operating lease" means a lease under which rental or lease  
26 expenses are included in current expenses in accordance with generally  
27 accepted accounting principles.

28 (38) "Owner" means a sole proprietor, general or limited partners,  
29 members of a limited liability company, and beneficial interest holders  
30 of five percent or more of a corporation's outstanding stock.

31 (39) "Ownership interest" means all interests beneficially owned by  
32 a person, calculated in the aggregate, regardless of the form which  
33 such beneficial ownership takes.

34 (40) "Patient day" or "resident day" means a calendar day of care  
35 provided to a nursing facility resident, regardless of payment source,  
36 which will include the day of admission and exclude the day of  
37 discharge; except that, when admission and discharge occur on the same  
38 day, one day of care shall be deemed to exist. A "medicaid day" or  
39 "recipient day" means a calendar day of care provided to a medicaid

1 recipient determined eligible by the department for services provided  
2 under chapter 74.09 RCW, subject to the same conditions regarding  
3 admission and discharge applicable to a patient day or resident day of  
4 care.

5 (41) "Professionally designated real estate appraiser" means an  
6 individual who is regularly engaged in the business of providing real  
7 estate valuation services for a fee, and who is deemed qualified by a  
8 nationally recognized real estate appraisal educational organization on  
9 the basis of extensive practical appraisal experience, including the  
10 writing of real estate valuation reports as well as the passing of  
11 written examinations on valuation practice and theory, and who by  
12 virtue of membership in such organization is required to subscribe and  
13 adhere to certain standards of professional practice as such  
14 organization prescribes.

15 (42) "Qualified therapist" means:

16 (a) A mental health professional as defined by chapter 71.05 RCW;

17 (b) A mental retardation professional who is a therapist approved  
18 by the department who has had specialized training or one year's  
19 experience in treating or working with the mentally retarded or  
20 developmentally disabled;

21 (c) A speech pathologist who is eligible for a certificate of  
22 clinical competence in speech pathology or who has the equivalent  
23 education and clinical experience;

24 (d) A physical therapist as defined by chapter 18.74 RCW;

25 (e) An occupational therapist who is a graduate of a program in  
26 occupational therapy, or who has the equivalent of such education or  
27 training; and

28 (f) A respiratory care practitioner certified under chapter 18.89  
29 RCW.

30 (43) "Rate" or "rate allocation" means the medicaid per-patient-day  
31 payment amount for medicaid patients calculated in accordance with the  
32 allocation methodology set forth in part E of this chapter.

33 (44) "Real property," whether leased or owned by the contractor,  
34 means the building, allowable land, land improvements, and building  
35 improvements associated with a nursing facility.

36 (45) "Rebased rate" or "cost-rebased rate" means a facility-  
37 specific component rate assigned to a nursing facility for a particular  
38 rate period established on desk-reviewed, adjusted costs reported for  
39 that facility covering at least six months of a prior calendar year

1 designated as a year to be used for cost-rebasing payment rate  
2 allocations under the provisions of this chapter.

3 (46) "Records" means those data supporting all financial statements  
4 and cost reports including, but not limited to, all general and  
5 subsidiary ledgers, books of original entry, and transaction  
6 documentation, however such data are maintained.

7 (47) "Related organization" means an entity which is under common  
8 ownership and/or control with, or has control of, or is controlled by,  
9 the contractor.

10 (a) "Common ownership" exists when an entity is the beneficial  
11 owner of five percent or more ownership interest in the contractor and  
12 any other entity.

13 (b) "Control" exists where an entity has the power, directly or  
14 indirectly, significantly to influence or direct the actions or  
15 policies of an organization or institution, whether or not it is  
16 legally enforceable and however it is exercisable or exercised.

17 (48) "Related care" means only those services that are directly  
18 related to providing direct care to nursing facility residents. These  
19 services include, but are not limited to, nursing direction and  
20 supervision, medical direction, medical records, pharmacy services,  
21 activities, and social services.

22 (49) "Resident assessment instrument," including federally approved  
23 modifications for use in this state, means a federally mandated,  
24 comprehensive nursing facility resident care planning and assessment  
25 tool, consisting of the minimum data set and resident assessment  
26 protocols.

27 (50) "Resident assessment protocols" means those components of the  
28 resident assessment instrument that use the minimum data set to trigger  
29 or flag a resident's potential problems and risk areas.

30 (51) "Resource utilization groups" means a case mix classification  
31 system that identifies relative resources needed to care for an  
32 individual nursing facility resident.

33 (52) "Restricted fund" means those funds the principal and/or  
34 income of which is limited by agreement with or direction of the donor  
35 to a specific purpose.

36 (53) "Secretary" means the secretary of the department of social  
37 and health services.



1 (54) "Support services" means food, food preparation, dietary,  
2 housekeeping, and laundry services provided to nursing facility  
3 residents.

4 (55) "Therapy care" means those services required by a nursing  
5 facility resident's comprehensive assessment and plan of care, that are  
6 provided by qualified therapists, or support personnel under their  
7 supervision, including related costs as designated by the department.

8 (56) "Title XIX" or "medicaid" means the 1965 amendments to the  
9 social security act, P.L. 89-07, as amended and the medicaid program  
10 administered by the department.

11 **Sec. 2.** RCW 74.46.421 and 1999 c 353 s 3 are each amended to read  
12 as follows:

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

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

20 (b) The initial component rate allocations shall be subject to  
21 adjustment as provided in this section in order to assure that the  
22 state-wide average payment rate to nursing facilities is less than or  
23 equal to the state-wide average payment rate specified in the biennial  
24 appropriations act.

25 (3) Nothing in this chapter shall be construed as creating a legal  
26 right or entitlement to any payment that (a) has not been adjusted  
27 under this section or (b) would cause the state-wide average payment  
28 rate to exceed the state-wide average payment rate specified in the  
29 biennial appropriations act.

30 (4)(a) The state-wide average payment rate for the capital portion  
31 of the rate for any state fiscal year under the nursing facility  
32 medicaid payment system, weighted by patient days, shall not exceed the  
33 annual state-wide weighted average nursing facility payment rate for  
34 the capital portion of the rate identified for that fiscal year in the  
35 biennial appropriations act.

36 (b) If the department determines that the weighted average nursing  
37 facility payment rate for the capital portion of the rate calculated in  
38 accordance with this chapter is likely to exceed the weighted average

1 nursing facility payment rate for the capital portion of the rate  
2 identified in the biennial appropriations act, then the department  
3 shall adjust all nursing facility property and financing allowance  
4 payment rates proportional to the amount by which the weighted average  
5 rate allocations would otherwise exceed the budgeted capital portion of  
6 the rate amount. Any such adjustments shall only be made  
7 prospectively, not retrospectively, and shall be applied  
8 proportionately to each component rate allocation for each facility.

9 (c) Any rate adjustments made under (b) of this subsection that are  
10 in excess of the amount necessary to comply with (a) of this subsection  
11 shall be refunded to each nursing facility.

12 (5)(a) The state-wide average payment rate for the noncapital  
13 portion of the rate for any state fiscal year under the nursing  
14 facility payment system, weighted by patient days, shall not exceed the  
15 annual state-wide weighted average nursing facility payment rate for  
16 the noncapital portion of the rate identified for that fiscal year in  
17 the biennial appropriations act.

18 (b) If the department determines that the weighted average nursing  
19 facility payment rate for the noncapital portion of the rate calculated  
20 in accordance with this chapter is likely to exceed the weighted  
21 average nursing facility payment rate for the noncapital portion of the  
22 rate identified in the biennial appropriations act, then the department  
23 shall adjust all nursing facility direct care, therapy care, support  
24 services, operations, and variable return payment rates proportional to  
25 the amount by which the weighted average rate allocations would  
26 otherwise exceed the budgeted noncapital portion of the rate amount.  
27 Any such adjustments shall only be made prospectively, not  
28 retrospectively, and shall be applied proportionately to each direct  
29 care, therapy care, support services, operations, and variable return  
30 rate allocation for each facility.

31 (c) Any rate adjustments made under (b) of this subsection that are  
32 in excess of the amount necessary to comply with (a) of this subsection  
33 shall be refunded to each nursing facility.

34 (6)(a) If pro rata reductions are made pursuant to subsection  
35 (4)(b) of this section but not pursuant to subsection (5)(b) of this  
36 section, and if the annual state-wide weighted average nursing facility  
37 payment rate for the noncapital portion of the rate identified for that  
38 fiscal year in the biennial appropriations act is greater than the  
39 state-wide average payment rate for the noncapital portion of the rate

1 for that state fiscal year under the nursing facility medicaid payment  
2 system, weighted by patient days, then at the end of that state fiscal  
3 year, the department shall:

4 (i) Calculate the difference between the actual rate and the rate  
5 set in the biennial appropriations act;

6 (ii) For the purposes of implementing subsections (4) and (5) of  
7 this section, increase the capital portion of the rate established in  
8 the biennial appropriations act by the amount calculated in (a)(i) of  
9 this subsection (6); and

10 (iii) Apply the provisions of subsection (4)(c) of this section.

11 (b) If pro rata reductions are made pursuant to subsection (5)(b)  
12 of this section but not pursuant to subsection (4)(b) of this section,  
13 and if the annual state-wide weighted average nursing facility payment  
14 rate for the capital portion of the rate identified for that fiscal  
15 year in the biennial appropriations act is greater than the state-wide  
16 average payment rate for the capital portion of the rate for that state  
17 fiscal year under the nursing facility medicaid payment system,  
18 weighted by patient days, then at the end of that fiscal year the  
19 department shall:

20 (i) Calculate the difference between the actual rate and the rate  
21 set in the biennial appropriations act;

22 (ii) For the purposes of implementing subsections (4) and (5) of  
23 this section, increase the noncapital portion of the rate established  
24 in the biennial appropriations act by the amount calculated in (b)(i)  
25 of this subsection (6); and

26 (iii) Apply the provisions of subsection (5)(c) of this section.

27 NEW SECTION. Sec. 3. RCW 74.46.908 (Repealer) and 1999 c 353 s 17  
28 are each repealed.

29 NEW SECTION. Sec. 4. (1) Section 1 of this act takes effect July  
30 1, 2000.

31 (2) Sections 2 and 3 of this act are necessary for the immediate  
32 preservation of the public peace, health, or safety, or support of the  
33 state government and its existing public institutions, and take effect  
34 immediately.

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