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HOUSE BILL 2928

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State of Washington                      57th Legislature                      2002 Regular Session

By Representatives Linville, Sehlin and Pflug

Read first time 02/07/2002. Referred to Committee on Health Care.

1            AN ACT Relating to state payment for long-term care services;  
2 amending RCW 74.39A.005, 74.39A.009, 74.39A.030, and 74.46.190;  
3 creating a new section; and providing an effective date.

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

5            **Sec. 1.** RCW 74.39A.005 and 2000 c 121 s 9 are each amended to read  
6 as follows:

7            The legislature finds that the aging of the population and advanced  
8 medical technology have resulted in a growing number of persons who  
9 require assistance. The primary resource for long-term care continues  
10 to be family and friends. However, these traditional caregivers are  
11 increasingly employed outside the home. There is a growing demand for  
12 improvement and expansion of home and community-based long-term care  
13 services to support and complement the services provided by these  
14 informal caregivers.

15            The legislature further finds that the public interest would best  
16 be served by a broad array of long-term care services that support  
17 persons who need such services at home or in the community whenever  
18 practicable and that promote individual autonomy, dignity, and choice.

1 The legislature finds that as other long-term care options become  
2 more available, the relative need for nursing home beds is likely to  
3 decline. The legislature recognizes, however, that nursing home care  
4 will continue to be a critical part of the state's long-term care  
5 options, and that such services should promote individual dignity,  
6 autonomy, and a homelike environment.

7 The legislature finds that many recipients of in-home services are  
8 vulnerable and their health and well-being are dependent on their  
9 caregivers. The quality, skills, and knowledge of their caregivers are  
10 often the key to good care. The legislature finds that the need for  
11 well-trained caregivers is growing as the state's population ages and  
12 clients' needs increase. The legislature intends that current training  
13 standards be enhanced.

14 The legislature finds that quality care cannot be assured by state  
15 mandates alone. Sufficient resources must be dedicated to long-term  
16 care services to facilitate competitive salaries that will attract and  
17 retain quality caregivers. The legislature recognizes that past  
18 failure to provide such resources has contributed to caregiver  
19 recruitment and retention problems in all long-term care settings.  
20 These problems can only degrade the continuity and quality of care for  
21 those persons dependent upon such care.

22 The legislature finds that state government has assumed the  
23 responsibility of purchasing long-term care services for a large  
24 proportion of those receiving such services. The legislature further  
25 finds that to ensure that state government's expectations concerning  
26 the quality of long-term care services are met, its payments for those  
27 services should be fair and reasonable and adequately compensate the  
28 current costs incurred in providing those services.

29 **Sec. 2.** RCW 74.39A.009 and 1997 c 392 s 103 are each amended to  
30 read as follows:

31 Unless the context clearly requires otherwise, the definitions in  
32 this section apply throughout this chapter.

33 (1) "Adult family home" means a home licensed under chapter 70.128  
34 RCW.

35 (2) "Adult residential care services" means services provided by a  
36 boarding home that is licensed under chapter 18.20 RCW and that has a  
37 contract with the department under RCW 74.39A.020.

1 (3) "Assisted living services" means services provided by a  
2 boarding home that has a contract with the department under RCW  
3 74.39A.010 and the resident is housed in a private apartment-like unit.

4 (4) "Boarding home" means a facility licensed under chapter 18.20  
5 RCW.

6 (5) "Cost-effective care" means care provided, in conformity with  
7 applicable laws, rules, regulations, and expectations of the state and  
8 federal governments, in a setting of an individual's choice that is  
9 necessary to promote the ((most appropriate)) highest practicable level  
10 of physical, mental, and psychosocial well-being consistent with client  
11 choice, in an environment that is appropriate to the care and safety  
12 needs of the individual, and such care cannot be provided at a lower  
13 cost in any other setting. But this in no way precludes an individual  
14 from choosing a different residential setting to achieve his or her  
15 desired quality of life.

16 (6) "Department" means the department of social and health  
17 services.

18 (7) "Enhanced adult residential care services" means services  
19 provided by a boarding home that is licensed under chapter 18.20 RCW  
20 and that has a contract with the department under RCW 74.39A.010.

21 (8) "Functionally disabled person" is synonymous with chronic  
22 functionally disabled and means a person who because of a recognized  
23 chronic physical or mental condition or disease, including chemical  
24 dependency, is impaired to the extent of being dependent upon others  
25 for direct care, support, supervision, or monitoring to perform  
26 activities of daily living. "Activities of daily living", in this  
27 context, means self-care abilities related to personal care such as  
28 bathing, eating, using the toilet, dressing, and transfer.  
29 Instrumental activities of daily living may also be used to assess a  
30 person's functional abilities as they are related to the mental  
31 capacity to perform activities in the home and the community such as  
32 cooking, shopping, house cleaning, doing laundry, working, and managing  
33 personal finances.

34 (9) "Home and community services" means adult family homes, in-home  
35 services, adult day services, and other services administered or  
36 provided by contract by the department directly or through contract  
37 with area agencies on aging or similar services provided by facilities  
38 and agencies licensed by the department.

1 (10) "Long-term care" is synonymous with chronic care and means  
2 care and supports delivered indefinitely, intermittently, or over a  
3 sustained time to persons of any age disabled by chronic mental or  
4 physical illness, disease, chemical dependency, or a medical condition  
5 that is permanent, not reversible or curable, or is long-lasting and  
6 severely limits their mental or physical capacity for self-care. The  
7 use of this definition is not intended to expand the scope of services,  
8 care, or assistance by any individuals, groups, residential care  
9 settings, or professions unless otherwise expressed by law.

10 (11) "Nursing home" means a facility licensed under chapter 18.51  
11 RCW.

12 (12) "Nursing home services" means services provided by a nursing  
13 home that has a contract with the department under chapter 74.46 RCW.

14 (13) "Secretary" means the secretary of social and health services.

15 (~~(13)~~) (14) "Tribally licensed boarding home" means a boarding  
16 home licensed by a federally recognized Indian tribe which home  
17 provides services similar to boarding homes licensed under chapter  
18 18.20 RCW.

19 **Sec. 3.** RCW 74.39A.030 and 2002 c 3 s 10 (Initiative Measure No.  
20 775) are each amended to read as follows:

21 (1) To the extent of available funding, the department shall expand  
22 cost-effective options for home and community services for consumers  
23 for whom the state participates in the cost of their care.

24 (2) In expanding home and community services, the department shall:  
25 (a) Take full advantage of federal funding available under Title XVIII  
26 and Title XIX of the federal social security act, including home  
27 health, adult day (~~(care))~~ services, waiver options, and state plan  
28 services; and (b) be authorized to use funds available under its  
29 community options program entry system waiver granted under section  
30 1915(c) of the federal social security act to expand the availability  
31 of in-home, adult residential care, adult family homes, enhanced adult  
32 residential care, and assisted living services. By June 30, 1997, the  
33 department shall undertake to reduce the nursing home medicaid census  
34 by at least one thousand six hundred by assisting individuals who would  
35 otherwise require nursing facility services to obtain services of their  
36 choice, including assisted living services, enhanced adult residential  
37 care, and other home and community services. If a resident, or his or  
38 her legal representative, objects to a discharge decision initiated by

1 the department, the resident shall not be discharged if the resident  
2 has been assessed and determined to require nursing facility services.  
3 In contracting with nursing homes and boarding homes for enhanced adult  
4 residential care placements, the department shall not require, by  
5 contract or through other means, structural modifications to existing  
6 building construction.

7 (3)(a) The department shall by rule establish payment rates for  
8 home and community services ~~((that))~~, adult and enhanced adult  
9 residential care services, assisted living services, and nursing home  
10 services, that are fair and reasonable and adequately pay for current  
11 costs incurred to support the provision of cost-effective care and  
12 services. In the event of any conflict between any such rule and a  
13 collective bargaining agreement entered into under RCW 74.39A.270 and  
14 74.39A.300, the collective bargaining agreement prevails.

15 (b) The department may authorize an enhanced adult residential care  
16 rate for nursing homes that temporarily or permanently convert their  
17 bed use for the purpose of providing enhanced adult residential care  
18 under chapter 70.38 RCW, when the department determines that payment of  
19 an enhanced rate is cost-effective and necessary to foster expansion of  
20 contracted enhanced adult residential care services. As an incentive  
21 for nursing homes to permanently convert a portion of its nursing home  
22 bed capacity for the purpose of providing enhanced adult residential  
23 care, the department may authorize a supplemental add-on to the  
24 enhanced adult residential care rate.

25 (c) The department may authorize a supplemental assisted living  
26 services rate for up to four years for facilities that convert from  
27 nursing home use and do not retain rights to the converted nursing home  
28 beds under chapter 70.38 RCW, if the department determines that payment  
29 of a supplemental rate is cost-effective and necessary to foster  
30 expansion of contracted assisted living services.

31 **Sec. 4.** RCW 74.46.190 and 1998 c 322 s 11 are each amended to read  
32 as follows:

33 (1) The substance of a transaction will prevail over its form.

34 (2) All documented costs which are ordinary, necessary, related to  
35 care of medical care recipients, and not expressly unallowable under  
36 this chapter ~~((or department rule))~~, are to be allowable and will be  
37 fully reimbursed by the department. Costs of providing therapy care  
38 are allowable, subject to any applicable limit contained in this

1 chapter, provided documentation establishes the costs were incurred for  
2 medical care recipients and other sources of payment to which  
3 recipients may be legally entitled, such as private insurance or  
4 medicare, were first fully utilized.

5 (3) The payment for property usage is to be independent of  
6 ownership structure and financing arrangements.

7 (4) Allowable costs shall not include costs reported by a  
8 contractor for a prior period to the extent such costs, due to  
9 statutory exemption, will not be incurred by the nursing facility in  
10 the period to be covered by the rate.

11 (5) Any costs deemed allowable under this chapter are subject to  
12 the provisions of RCW 74.46.421. (~~The allowability of a cost shall~~  
13 ~~not be construed as creating a legal right or entitlement to~~  
14 ~~reimbursement of the cost.))~~

15 NEW SECTION. **Sec. 5.** This act may be known and cited as the  
16 Washington long-term care quality act.

17 NEW SECTION. **Sec. 6.** This act takes effect July 1, 2003.

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