

FINAL BILL REPORT

ESB 6629

C 263 L 08

Synopsis as Enacted

Brief Description: Making clarifications to the nursing facility medicaid payment system in relation to the use of minimum occupancy in setting cost limits and application of the statewide average payment rate specified in the biennial appropriations act.

Sponsors: Senators Franklin and Prentice; by request of Department of Social and Health Services.

Senate Committee on Ways & Means

Background: There are about 240 nursing home facilities in Washington providing long-term care services to approximately 11,000 Medicaid clients. The nursing facility payment system was first enacted into statute in 1980. Washington State is one of only a few states with details of the payment system in statute. The system is administered by the Department of Social and Health Services (Department). If the statute needs clarification, this often cannot be done through the rule-making process, and the Department must submit request legislation.

Nursing Facility Payment System and Median Cost Limits. The current payment system consists of seven different rate components: direct care, therapy care, support services, operations, property, financing allowance, and variable return.

A "minimum occupancy adjustment" is applied to all of the rate components except direct care. Aside from specific cases where a "hold harmless" applies, if a facility does not have more than a certain percentage of its beds filled, the rates are adjusted downward.

In several areas, median cost limits (MCLs), or caps, are applied to costs used to calculate the level of reimbursement available to a nursing facility (for example, the MCL for "operations" is 100 percent of median, meaning that facilities whose "operations" costs are above the median relative to their peers have their reimbursement limited to the median level).

Nursing Facility Rate Legislation Passed in the 2006 Session. The 2006 Legislature passed EHB 2716 (C 258 L 06), which amended the payment statute with a variety of changes that increased the level of reimbursement for many providers. Some of these changes included eliminating the minimum occupancy adjustment for direct care, and creating a "hold harmless" to operations' costs and direct care costs for certain providers who would not have had their reimbursement increased. Included in this legislation was a clarification that minimum occupancy adjustments are applied to operations' costs prior to the calculation of median cost limits or MCLs. As the bill did not make changes to support services or therapy care, these sections were not amended. Existing statute defines these rate component allocations as including a minimum occupancy adjustment.

Nursing Facility Payment – Limits on Rates Set by the Operating Budget Act. The biennial operating budget act sets limits on overall nursing facility reimbursement. First, it

appropriates funds based on expected caseload and average daily reimbursement rates. Second, it specifies an expected average daily rate commonly known as the "budget dial." This acts as a cap or limit on the total average reimbursement rates paid in that fiscal year.

If the Department determines that actual average daily rates paid to nursing facilities over the course of the year will be greater than the budget dial specified in that year's budget, then the Department has a statutory obligation to reduce the rates paid to all nursing facilities to make sure that this does not occur (alternately, the Legislature can appropriate additional funding to prevent a reduction in rates).

Appeals of Rates for Prior Years & Retroactive Payment. Nursing facilities have the right to appeal their reimbursement rate, which can result in hearings, lawsuits, or settlements. Sometimes these legal actions result in retroactive payment to the nursing facility for prior state fiscal years.

Summary: The act addresses three issues:

- 1) The act clarifies that the minimum occupancy adjustments are applied prior to the calculation of median cost limits for support services and therapy care, as well as for operations.
- 2) The act clarifies that any retroactive payments to nursing homes for a prior fiscal year may not cause the statewide average rate to exceed the budget dial for that same fiscal year. If a court judgment or order requiring retroactive payment for a prior fiscal year would result in the budget dial being exceeded for that same prior fiscal year, then the Department is only required to pay to the order to the extent that the statewide average would not exceed that budget dial.
- 3) The act clarifies that effective July 1, 2007, direct care rates are to be based on actual occupancy of residents regardless of whether a facility increases its number of beds. This results in an increase to certain facilities' direct care rates in fiscal years 2008 and 2009.

The Legislature intends that 2008 enactment of these sections is meant to be curative, remedial, and retroactively applied to July 1, 1998.

Votes on Final Passage:

Senate	49	0
House	97	0

Effective: June 12, 2008