
HOUSE BILL 2290

State of Washington 61st Legislature 2009 Regular Session

By Representatives Cody and Morrell

Read first time 02/24/09. Referred to Committee on Ways & Means.

1 AN ACT Relating to the nursing facility medicaid payment system;
2 amending RCW 74.46.421, 74.46.800, 74.46.431, 74.46.485, and 74.46.835;
3 adding new sections to chapter 74.46 RCW; creating a new section;
4 repealing RCW 74.46.010, 74.46.020, 74.46.030, 74.46.040, 74.46.050,
5 74.46.060, 74.46.080, 74.46.090, 74.46.100, 74.46.155, 74.46.165,
6 74.46.190, 74.46.200, 74.46.220, 74.46.230, 74.46.240, 74.46.250,
7 74.46.270, 74.46.280, 74.46.290, 74.46.300, 74.46.310, 74.46.320,
8 74.46.330, 74.46.340, 74.46.350, 74.46.360, 74.46.370, 74.46.380,
9 74.46.390, 74.46.410, 74.46.431, 74.46.433, 74.46.435, 74.46.437,
10 74.46.439, 74.46.441, 74.46.445, 74.46.475, 74.46.485, 74.46.496,
11 74.46.501, 74.46.506, 74.46.508, 74.46.511, 74.46.515, 74.46.521,
12 74.46.531, 74.46.533, 74.46.600, 74.46.610, 74.46.620, 74.46.625,
13 74.46.630, 74.46.640, 74.46.650, 74.46.660, 74.46.680, 74.46.690,
14 74.46.700, 74.46.711, 74.46.770, 74.46.780, 74.46.790, 74.46.820,
15 74.46.835, 74.46.900, 74.46.901, 74.46.902, 74.46.905, 74.46.906, and
16 74.46.907; providing effective dates; and declaring an emergency.

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

18 NEW SECTION. **Sec. 1.** (1) The legislature intends that the nursing
19 facility medicaid payment system be structured to promote quality care

1 and quality of life for residents. The legislature also intends that
2 the nursing facility medicaid payment system is efficient to
3 administer, accountable to the public and to the legislature, and
4 transparent to taxpayers and providers. The legislature finds that the
5 current statute governing the nursing facility medicaid payment system
6 is overly complex in contrast to Washington state's statutes governing
7 reimbursement systems for hospitals, physicians, boarding homes, and
8 other vendors, and that this complexity has made it difficult to focus
9 on systemic improvements in the nursing facility medicaid payment
10 system and in other long-term care policies.

11 (2) The legislature intends to simplify the existing nursing
12 facility medicaid payment system so that it is fair and predictable.
13 The legislature further intends that, effective July 1, 2010, the
14 essential structure of this simplified nursing facility medicaid
15 payment system will be described in statute, and the details of the
16 system will be described in rules reviewed by the nursing facility
17 medicaid payment advisory council and adopted by the department of
18 social and health services.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.46 RCW
20 to read as follows:

21 The nursing facility medicaid payment system shall have the
22 following structure:

23 (1) Nursing facility medicaid payment rate allocations must be
24 cost-based and facility-specific and have at least four components:
25 Direct care, including therapy; support services; indirect care; and
26 capital costs. Additional noncapital components may be considered if
27 the entire nursing facility medicaid payment system is budget-neutral
28 in comparison to the statewide weighted average payment rate that would
29 have been calculated as of July 1, 2010, using the nursing facility
30 medicaid payment system in place before that date.

31 (2) The direct care component shall use a case mix system.

32 (3) Noncapital components shall be subject to limits based upon a
33 determination of the median of facilities' costs with respect to a
34 particular component.

35 (4) Noncapital rates must be determined from annual cost reports
36 filed by facilities, with costs rebased every two years. The capital

1 rate component shall be determined July 1st of each year, based on cost
2 reports filed by facilities for the preceding year.

3 (5) Facilities must be separated into peer groups, based on
4 location.

5 (6) Payments must be subject to a settlement procedure that
6 compares costs to rates received and recovers unspent moneys as
7 appropriate.

8 (7) An occupancy adjustment must be applied to the indirect and
9 capital cost centers.

10 (8) A statewide weighted average payment rate and adjustments to
11 medicaid rate components for economic trends and conditions shall be
12 specified in the biennial appropriations act and may adjust payments if
13 necessary to ensure compliance.

14 (9) The department of social and health services must ensure that
15 nursing facility medicaid payment rates, in the aggregate for all
16 participating nursing facilities, comply with the biennial
17 appropriations act.

18 (10) Capital spending on nursing facilities subject to the
19 requirement of a certificate of capital authorization must be limited
20 by annual authorization amounts specified by the legislature pursuant
21 to RCW 74.46.807.

22 (11) The department is authorized within funds appropriated in the
23 operating budget to establish payments linked to performance measures.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.46 RCW
25 to read as follows:

26 Beginning July 1, 2009, the economic trends and conditions factor
27 or factors defined in the biennial appropriations act shall not be
28 compounded with the economic trends and conditions factor or factors
29 defined in any other biennial appropriations acts before applying it to
30 the component rate allocations established in accordance with this
31 chapter. When no economic trends and conditions factor for either
32 fiscal year is defined in a biennial appropriations act, no economic
33 trends and conditions factor or factors defined in any earlier biennial
34 appropriations act shall be applied solely or compounded to the
35 component rate allocations established in accordance with this chapter.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.46 RCW
2 to read as follows:

3 Beginning July 1, 2009, the department shall implement minimum data
4 set 3.0 under the authority of this section. The department will
5 notify nursing home contractors twenty-eight days in advance of the
6 date of implementation of minimum data set 3.0. In the notification,
7 the department must identify for all quarterly rate settings following
8 the date of minimum data set 3.0 implementation a previously
9 established quarterly case mix adjustment established for the quarterly
10 rate settings to be used for quarterly case mix calculations in direct
11 care until minimum data set 3.0 is fully implemented. After the
12 department has fully implemented minimum data set 3.0, it will adjust
13 any quarter in which it used the previously established quarterly case
14 mix adjustment using the new minimum data set 3.0 data.

15 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.46 RCW
16 to read as follows:

17 (1) The nursing facility medicaid payment advisory council is
18 established, composed of nine members who are residents of the state of
19 Washington.

20 (a) The governor shall appoint the members of the council as
21 follows:

22 (i) A representative of an association that primarily includes
23 operators of for-profit nursing facilities;

24 (ii) A representative of an association that primarily includes
25 operators of not-for-profit nursing facilities;

26 (iii) A representative of an organization that provides a wide
27 variety of health care services in various care settings, including
28 nursing facilities;

29 (iv) A representative of a union that represents employees of
30 nursing facilities;

31 (v) A nursing home administrator licensed under chapter 18.52 RCW
32 who has practiced continuously in Washington in long-term care for
33 three years immediately preceding appointment;

34 (vi) A director of nursing services of a Washington nursing
35 facility who has practiced continuously in Washington for at least
36 three years immediately preceding appointment;

37 (vii) A representative of a senior advocacy organization;

- 1 (viii) A representative from the office of financial management;
2 (ix) A representative of an independent nursing facility not a
3 member of an industry association;
4 (x) A long-term care ombudsman;
5 (xi) A consumer advocate for developmental disabilities; and
6 (xii) A consumer advocate for long-term care.

7 (b) The governor shall appoint a chairperson for the council from
8 the council's membership for a term of one year or until a successor is
9 appointed.

10 (2) The term of office of each member shall be three years or until
11 a successor has been appointed and confirmed.

12 (3) Members of the council shall receive no compensation for their
13 services but shall be reimbursed for travel expenses as provided in RCW
14 43.03.050 and 43.03.060.

15 (4) The council shall:

16 (a) Act in an advisory capacity to the department of social and
17 health services on matters pertaining to the nursing facility medicaid
18 payment system;

19 (b) Elect a secretary from among its members, who shall hold office
20 for one year or until a successor is elected;

21 (c) Hold an annual meeting and hold other meetings at such times
22 and places as the department of social and health services or the
23 chairperson of the council may direct;

24 (d) In its discretion, invite other representatives to its meetings
25 in addition to its members, depending on the topics to be discussed;
26 and

27 (e) Keep a record of its proceedings that is open to inspection at
28 all times.

29 (5) The department of social and health services shall provide
30 administrative support to the council.

31 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.46 RCW
32 to read as follows:

33 (1) The department of social and health services shall submit to
34 the nursing facility medicaid payment advisory council any proposed
35 rule implementing the nursing facility medicaid payment system, for the
36 council's review and comment.

1 (2) After review of any proposed rule submitted to the council
2 under subsection (1) of this section, the council shall comment
3 publicly on it. The council's comments shall be made part of the
4 official rule-making file of any rule proposed by the department. All
5 other relevant laws shall continue to apply to the department's
6 consideration and adoption of rules.

7 **Sec. 7.** RCW 74.46.421 and 2008 c 263 s 1 are each amended to read
8 as follows:

9 (1) The purpose of (~~part E of~~) this chapter is to determine
10 nursing facility medicaid payment rates that, in the aggregate for all
11 participating nursing facilities, are in accordance with the biennial
12 appropriations act.

13 (2)(a) The department shall use the nursing facility medicaid
14 payment rate methodologies described in this chapter and in rules
15 adopted by the department to determine initial component rate
16 allocations for each medicaid nursing facility.

17 (b) The initial component rate allocations shall be subject to
18 adjustment as provided in this section in order to assure that the
19 statewide weighted average payment rate to nursing facilities is less
20 than or equal to the statewide weighted average payment rate specified
21 in the biennial appropriations act.

22 (3) Nothing in this chapter shall be construed as creating a legal
23 right or entitlement to any payment that (a) has not been adjusted
24 under this section or (b) would cause the statewide weighted average
25 payment rate to exceed the statewide weighted average payment rate
26 specified in the biennial appropriations act.

27 (4)(a) The statewide weighted average payment rate for any state
28 fiscal year under the nursing facility medicaid payment system,
29 weighted by patient days, shall not exceed the annual statewide
30 weighted average nursing facility payment rate identified for that
31 fiscal year in the biennial appropriations act.

32 (b) If the department determines that the weighted average nursing
33 facility payment rate calculated in accordance with this chapter is
34 likely to exceed the weighted average nursing facility payment rate
35 identified in the biennial appropriations act, then the department
36 shall adjust all nursing facility payment rates proportional to the
37 amount by which the weighted average rate allocations would otherwise

1 exceed the budgeted rate amount. Any such adjustments for the current
2 fiscal year shall only be made prospectively, not retrospectively, and
3 shall be applied proportionately to each component rate allocation for
4 each facility.

5 (c) If any final order or final judgment, including a final order
6 or final judgment resulting from an adjudicative proceeding or judicial
7 review permitted by chapter 34.05 RCW, would result in an increase to
8 a nursing facility's payment rate for a prior fiscal year or years, the
9 department shall consider whether the increased rate for that facility
10 would result in the statewide weighted average payment rate for all
11 facilities for such fiscal year or years to be exceeded. If the
12 increased rate would result in the statewide weighted average payment
13 rate for such year or years being exceeded, the department shall
14 increase that nursing facility's payment rate to meet the final order
15 or judgment only to the extent that it does not result in an increase
16 to the statewide weighted average payment rate for all facilities.

17 **Sec. 8.** RCW 74.46.800 and 1998 c 322 s 42 are each amended to read
18 as follows:

19 (1) Consistent with the principles and provisions described in
20 section 2 of this act, the department shall have authority to adopt,
21 amend, and rescind such administrative rules and definitions as it
22 deems necessary to carry out the policies and purposes of this chapter,
23 to administer the nursing facility medicaid payment system, to audit
24 nursing facilities, and to resolve issues and develop procedures that
25 it deems necessary to implement, update, and improve the case mix
26 elements of the nursing facility medicaid payment system. In adopting
27 rules, the department may consider the potential impact of the payment
28 system on the level and quality of services received by nursing
29 facility residents; the anticipated impact of the system on private pay
30 clients and on populations in other parts of the long-term care system;
31 and the special circumstances presented by changes of ownership of
32 nursing facilities, bed banking, exceptional care needs of residents,
33 addition or deletion of licensed beds, facilities located in nonurban
34 areas, closure of facilities, and facilities with low-occupancy levels,
35 as well as other concerns.

36 (2) Nothing in this chapter shall be construed to require the
37 department to adopt or employ any calculations, steps, tests,

1 methodologies, alternate methodologies, indexes, formulas, mathematical
2 or statistical models, concepts, or procedures for medicaid rate
3 setting or payment that are not expressly called for in this chapter.

4 (3) By December 31, 2009, the department must adopt comprehensive
5 rules to describe and administer the nursing facility medicaid payment
6 system, to be effective July 1, 2010. The system described in such
7 rules must be budget-neutral in comparison to the statewide weighted
8 average payment rate that would have been calculated as of July 1,
9 2010, using the nursing facility medicaid payment system in place
10 before that date.

11 **Sec. 9.** RCW 74.46.431 and 2008 c 263 s 2 are each amended to read
12 as follows:

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

20 (2) Component rate allocations in therapy care, support services,
21 variable return, operations, property, and financing allowance for
22 essential community providers as defined in this chapter shall be based
23 upon a minimum facility occupancy of eighty-five percent of licensed
24 beds, regardless of how many beds are set up or in use. For all
25 facilities other than essential community providers, effective July 1,
26 2001, component rate allocations in direct care, therapy care, support
27 services, and variable return shall be based upon a minimum facility
28 occupancy of eighty-five percent of licensed beds. For all facilities
29 other than essential community providers, effective July 1, 2002, the
30 component rate allocations in operations, property, and financing
31 allowance shall be based upon a minimum facility occupancy of ninety
32 percent of licensed beds, regardless of how many beds are set up or in
33 use. For all facilities, effective July 1, 2006, the component rate
34 allocation in direct care shall be based upon actual facility
35 occupancy. The median cost limits used to set component rate
36 allocations shall be based on the applicable minimum occupancy
37 percentage. In determining each facility's therapy care component rate

1 allocation under RCW 74.46.511, the department shall apply the
2 applicable minimum facility occupancy adjustment before creating the
3 array of facilities' adjusted therapy costs per adjusted resident day.
4 In determining each facility's support services component rate
5 allocation under RCW 74.46.515(3), the department shall apply the
6 applicable minimum facility occupancy adjustment before creating the
7 array of facilities' adjusted support services costs per adjusted
8 resident day. In determining each facility's operations component rate
9 allocation under RCW 74.46.521(3), the department shall apply the
10 minimum facility occupancy adjustment before creating the array of
11 facilities' adjusted general operations costs per adjusted resident
12 day.

13 (3) Information and data sources used in determining medicaid
14 payment rate allocations, including formulas, procedures, cost report
15 periods, resident assessment instrument formats, resident assessment
16 methodologies, and resident classification and case mix weighting
17 methodologies, may be substituted or altered from time to time as
18 determined by the department.

19 (4)(a) Direct care component rate allocations shall be established
20 using adjusted cost report data covering at least six months. Adjusted
21 cost report data from 1996 will be used for October 1, 1998, through
22 June 30, 2001, direct care component rate allocations; adjusted cost
23 report data from 1999 will be used for July 1, 2001, through June 30,
24 2006, direct care component rate allocations. Adjusted cost report
25 data from 2003 will be used for July 1, 2006, through June 30, 2007,
26 direct care component rate allocations. Adjusted cost report data from
27 2005 will be used for July 1, 2007, through June 30, 2009, direct care
28 component rate allocations. Effective July 1, 2009, the direct care
29 component rate allocation shall be rebased biennially, and thereafter
30 for each odd-numbered year beginning July 1st, using the adjusted cost
31 report data for the calendar year two years immediately preceding the
32 rate rebase period, so that adjusted cost report data for calendar year
33 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

34 (b) Direct care component rate allocations based on 1996 cost
35 report data shall be adjusted annually for economic trends and
36 conditions by a factor or factors defined in the biennial
37 appropriations act. A different economic trends and conditions
38 adjustment factor or factors may be defined in the biennial

1 appropriations act for facilities whose direct care component rate is
2 set equal to their adjusted June 30, 1998, rate, as provided in RCW
3 74.46.506(5)(i).

4 (c) Direct care component rate allocations based on 1999 cost
5 report data shall be adjusted annually for economic trends and
6 conditions by a factor or factors defined in the biennial
7 appropriations act. A different economic trends and conditions
8 adjustment factor or factors may be defined in the biennial
9 appropriations act for facilities whose direct care component rate is
10 set equal to their adjusted June 30, 1998, rate, as provided in RCW
11 74.46.506(5)(i).

12 (d) Direct care component rate allocations based on 2003 cost
13 report data shall be adjusted annually for economic trends and
14 conditions by a factor or factors defined in the biennial
15 appropriations act. A different economic trends and conditions
16 adjustment factor or factors may be defined in the biennial
17 appropriations act for facilities whose direct care component rate is
18 set equal to their adjusted June 30, 2006, rate, as provided in RCW
19 74.46.506(5)(i).

20 (e) Direct care 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 direct care component rate allocation established in accordance
28 with this chapter. When no economic trends and conditions factor or
29 factors for either fiscal year are defined in a biennial appropriations
30 act, no economic trends and conditions factor or factors defined in any
31 earlier biennial appropriations act shall be applied solely or
32 compounded to the direct care component rate allocation established in
33 accordance with this chapter.

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

1 2005, therapy care component rate allocations. Adjusted cost report
2 data from 1999 will continue to be used for July 1, 2005, through June
3 30, 2007, therapy care component rate allocations. Adjusted cost
4 report data from 2005 will be used for July 1, 2007, through June 30,
5 2009, therapy care component rate allocations. Effective July 1, 2009,
6 and thereafter for each odd-numbered year beginning July 1st, the
7 therapy care component rate allocation shall be cost rebased
8 biennially, using the adjusted cost report data for the calendar year
9 two years immediately preceding the rate rebase period, so that
10 adjusted cost report data for calendar year 2007 is used for July 1,
11 2009, through June 30, 2011, and so forth.

12 (b) Therapy care component rate allocations established in
13 accordance with this chapter shall be adjusted annually for economic
14 trends and 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 therapy care component rate allocation established in accordance
20 with this chapter. When no economic trends and conditions factor or
21 factors for either fiscal year are defined in a biennial appropriations
22 act, no economic trends and conditions factor or factors defined in any
23 earlier biennial appropriations act shall be applied solely or
24 compounded to the therapy care component rate allocation established in
25 accordance with this chapter.

26 (6)(a) Support services component rate allocations shall be
27 established using adjusted cost report data covering at least six
28 months. Adjusted cost report data from 1996 shall be used for October
29 1, 1998, through June 30, 2001, support services component rate
30 allocations; adjusted cost report data from 1999 shall be used for July
31 1, 2001, through June 30, 2005, support services component rate
32 allocations. Adjusted cost report data from 1999 will continue to be
33 used for July 1, 2005, through June 30, 2007, support services
34 component rate allocations. Adjusted cost report data from 2005 will
35 be used for July 1, 2007, through June 30, 2009, support services
36 component rate allocations. Effective July 1, 2009, and thereafter for
37 each odd-numbered year beginning July 1st, the support services
38 component rate allocation shall be cost rebased biennially, using the

1 adjusted cost report data for the calendar year two years immediately
2 preceding the rate rebase period, so that adjusted cost report data for
3 calendar year 2007 is used for July 1, 2009, through June 30, 2011, and
4 so forth.

5 (b) Support services component rate allocations established in
6 accordance with this chapter shall be adjusted annually for economic
7 trends and conditions by a factor or factors defined in the biennial
8 appropriations act. The economic trends and conditions factor or
9 factors defined in the biennial appropriations act shall not be
10 compounded with the economic trends and conditions factor or factors
11 defined in any other biennial appropriations acts before applying it to
12 the support services component rate allocation established in
13 accordance with this chapter. When no economic trends and conditions
14 factor or factors for either fiscal year are defined in a biennial
15 appropriations act, no economic trends and conditions factor or factors
16 defined in any earlier biennial appropriations act shall be applied
17 solely or compounded to the support services component rate allocation
18 established in accordance with this chapter.

19 (7)(a) Operations component rate allocations shall be established
20 using adjusted cost report data covering at least six months. Adjusted
21 cost report data from 1996 shall be used for October 1, 1998, through
22 June 30, 2001, operations component rate allocations; adjusted cost
23 report data from 1999 shall be used for July 1, 2001, through June 30,
24 2006, operations component rate allocations. Adjusted cost report data
25 from 2003 will be used for July 1, 2006, through June 30, 2007,
26 operations component rate allocations. Adjusted cost report data from
27 2005 will be used for July 1, 2007, through June 30, 2009, operations
28 component rate allocations. Effective July 1, 2009, and thereafter for
29 each odd-numbered year beginning July 1st, the operations component
30 rate allocation shall be cost rebased biennially, using the adjusted
31 cost report data for the calendar year two years immediately preceding
32 the rate rebase period, so that adjusted cost report data for calendar
33 year 2007 is used for July 1, 2009, through June 30, 2011, and so
34 forth.

35 (b) Operations component rate allocations established in accordance
36 with this chapter shall be adjusted annually for economic trends and
37 conditions by a factor or factors defined in the biennial
38 appropriations act. The economic trends and conditions factor or

1 factors defined in the biennial appropriations act shall not be
2 compounded with the economic trends and conditions factor or factors
3 defined in any other biennial appropriations acts before applying it to
4 the operations component rate allocation established in accordance with
5 this chapter. When no economic trends and conditions factor or factors
6 for either fiscal year are defined in a biennial appropriations act, no
7 economic trends and conditions factor or factors defined in any earlier
8 biennial appropriations act shall be applied solely or compounded to
9 the operations component rate allocation established in accordance with
10 this chapter. A different economic trends and conditions adjustment
11 factor or factors may be defined in the biennial appropriations act for
12 facilities whose operations component rate is set equal to their
13 adjusted June 30, 2006, rate, as provided in RCW 74.46.521(4).

14 (8) For July 1, 1998, through September 30, 1998, a facility's
15 property and return on investment component rates shall be the
16 facility's June 30, 1998, property and return on investment component
17 rates, without increase. For October 1, 1998, through June 30, 1999,
18 a facility's property and return on investment component rates shall be
19 rebased utilizing 1997 adjusted cost report data covering at least six
20 months of data.

21 (9) Total payment rates under the nursing facility medicaid payment
22 system shall not exceed facility rates charged to the general public
23 for comparable services.

24 (10) Medicaid contractors shall pay to all facility staff a minimum
25 wage of the greater of the state minimum wage or the federal minimum
26 wage.

27 (11) The department shall establish in rule procedures, principles,
28 and conditions for determining component rate allocations for
29 facilities in circumstances not directly addressed by this chapter,
30 including but not limited to: The need to prorate inflation for
31 partial-period cost report data, newly constructed facilities, existing
32 facilities entering the medicaid program for the first time or after a
33 period of absence from the program, existing facilities with expanded
34 new bed capacity, existing medicaid facilities following a change of
35 ownership of the nursing facility business, facilities banking beds or
36 converting beds back into service, facilities temporarily reducing the
37 number of set-up beds during a remodel, facilities having less than six

1 months of either resident assessment, cost report data, or both, under
2 the current contractor prior to rate setting, and other circumstances.

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

8 (13) Effective July 1, 2001, medicaid rates shall continue to be
9 revised downward in all components, in accordance with department
10 rules, for facilities converting banked beds to active service under
11 chapter 70.38 RCW, by using the facility's increased licensed bed
12 capacity to recalculate minimum occupancy for rate setting. However,
13 for facilities other than essential community providers which bank beds
14 under chapter 70.38 RCW, after May 25, 2001, medicaid rates shall be
15 revised upward, in accordance with department rules, in direct care,
16 therapy care, support services, and variable return components only, by
17 using the facility's decreased licensed bed capacity to recalculate
18 minimum occupancy for rate setting, but no upward revision shall be
19 made to operations, property, or financing allowance component rates.
20 The direct care component rate allocation shall be adjusted, without
21 using the minimum occupancy assumption, for facilities that convert
22 banked beds to active service, under chapter 70.38 RCW, beginning on
23 July 1, 2006. Effective July 1, 2007, component rate allocations for
24 direct care shall be based on actual patient days regardless of whether
25 a facility has converted banked beds to active service.

26 (14) Facilities obtaining a certificate of need or a certificate of
27 need exemption under chapter 70.38 RCW after June 30, 2001, must have
28 a certificate of capital authorization in order for (a) the
29 depreciation resulting from the capitalized addition to be included in
30 calculation of the facility's property component rate allocation; and
31 (b) the net invested funds associated with the capitalized addition to
32 be included in calculation of the facility's financing allowance rate
33 allocation.

34 **Sec. 10.** RCW 74.46.485 and 1998 c 322 s 22 are each amended to
35 read as follows:

36 (1) The department shall:

1 (a) Employ the resource utilization group III case mix
2 classification methodology. The department shall use the forty-four
3 group index maximizing model for the resource utilization group III
4 grouper version 5.10, but the department may revise or update the
5 classification methodology to reflect advances or refinements in
6 resident assessment or classification, subject to federal requirements;
7 and

8 (b) Implement minimum data set 3.0 under the authority of this
9 section and RCW 74.46.431(3). The department must notify nursing home
10 contractors twenty-eight days in advance the date of implementation of
11 the minimum data set 3.0. In the notification, the department must
12 identify for all quarterly rate settings following the date of minimum
13 data set 3.0 implementation a previously established quarterly case mix
14 adjustment established for the quarterly rate settings that will be
15 used for quarterly case mix calculations in direct care until minimum
16 data set 3.0 is fully implemented. After the department has fully
17 implemented minimum data set 3.0, it must adjust any quarter in which
18 it used the previously established quarterly case mix adjustment using
19 the new minimum data set 3.0 data.

20 (2) A default case mix group shall be established for cases in
21 which the resident dies or is discharged for any purpose prior to
22 completion of the resident's initial assessment. The default case mix
23 group and case mix weight for these cases shall be designated by the
24 department.

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

29 NEW SECTION. Sec. 11. The following acts or parts of acts, as now
30 existing or hereafter amended, are each repealed:

31 (1) RCW 74.46.010 (Short title--Purpose) and 1998 c 322 s 1 & 1980
32 c 177 s 1;

33 (2) RCW 74.46.020 (Definitions) and 2007 c 508 s 7, 2006 c 258 s 1,
34 2001 1st sp.s. c 8 s 1, 1999 c 353 s 1, 1998 c 322 s 2, 1995 1st sp.s.
35 c 18 s 90, 1993 sp.s. c 13 s 1, 1991 sp.s. c 8 s 11, 1989 c 372 s 17,
36 1987 c 476 s 6, 1985 c 361 s 16, 1982 c 117 s 1, & 1980 c 177 s 2;

1 (3) RCW 74.46.030 (Principles of reporting requirements) and 1980
2 c 177 s 3;

3 (4) RCW 74.46.040 (Due dates for cost reports) and 1998 c 322 s 3,
4 1985 c 361 s 4, 1983 1st ex.s. c 67 s 1, & 1980 c 177 s 4;

5 (5) RCW 74.46.050 (Improperly completed or late cost report--
6 Fines--Adverse rate actions--Rules) and 1998 c 322 s 4, 1985 c 361 s 5,
7 & 1980 c 177 s 5;

8 (6) RCW 74.46.060 (Completing cost reports and maintaining records)
9 and 1998 c 322 s 5, 1985 c 361 s 6, 1983 1st ex.s. c 67 s 2, & 1980 c
10 177 s 6;

11 (7) RCW 74.46.080 (Requirements for retention of records by the
12 contractor) and 1998 c 322 s 6, 1985 c 361 s 7, 1983 1st ex.s. c 67 s
13 3, & 1980 c 177 s 8;

14 (8) RCW 74.46.090 (Retention of cost reports and resident
15 assessment information by the department) and 1998 c 322 s 7, 1985 c
16 361 s 8, & 1980 c 177 s 9;

17 (9) RCW 74.46.100 (Purposes of department audits--Examination--
18 Incomplete or incorrect reports--Contractor's duties--Access to
19 facility--Fines--Adverse rate actions) and 1998 c 322 s 8, 1985 c 361
20 s 9, 1983 1st ex.s. c 67 s 4, & 1980 c 177 s 10;

21 (10) RCW 74.46.155 (Reconciliation of medicaid resident days to
22 billed days and medicaid payments--Payments due--Accrued interest--
23 Withholding funds) and 1998 c 322 s 9;

24 (11) RCW 74.46.165 (Proposed settlement report--Payment refunds--
25 Overpayments--Determination of unused rate funds--Total and component
26 payment rates) and 2001 1st sp.s. c 8 s 2 & 1998 c 322 s 10;

27 (12) RCW 74.46.190 (Principles of allowable costs) and 1998 c 322
28 s 11, 1995 1st sp.s. c 18 s 96, 1983 1st ex.s. c 67 s 12, & 1980 c 177
29 s 19;

30 (13) RCW 74.46.200 (Offset of miscellaneous revenues) and 1980 c
31 177 s 20;

32 (14) RCW 74.46.220 (Payments to related organizations--Limits--
33 Documentation) and 1998 c 322 s 12 & 1980 c 177 s 22;

34 (15) RCW 74.46.230 (Initial cost of operation) and 1998 c 322 s 13,
35 1993 sp.s. c 13 s 3, & 1980 c 177 s 23;

36 (16) RCW 74.46.240 (Education and training) and 1980 c 177 s 24;

37 (17) RCW 74.46.250 (Owner or relative--Compensation) and 1980 c 177
38 s 25;

1 (18) RCW 74.46.270 (Disclosure and approval or rejection of cost
2 allocation) and 1998 c 322 s 14, 1983 1st ex.s. c 67 s 13, & 1980 c 177
3 s 27;

4 (19) RCW 74.46.280 (Management fees, agreements--Limitation on
5 scope of services) and 1998 c 322 s 15, 1993 sp.s. c 13 s 4, & 1980 c
6 177 s 28;

7 (20) RCW 74.46.290 (Expense for construction interest) and 1980 c
8 177 s 29;

9 (21) RCW 74.46.300 (Operating leases of office equipment--Rules)
10 and 1998 c 322 s 16 & 1980 c 177 s 30;

11 (22) RCW 74.46.310 (Capitalization) and 1983 1st ex.s. c 67 s 16 &
12 1980 c 177 s 31;

13 (23) RCW 74.46.320 (Depreciation expense) and 1980 c 177 s 32;

14 (24) RCW 74.46.330 (Depreciable assets) and 1980 c 177 s 33;

15 (25) RCW 74.46.340 (Land, improvements--Depreciation) and 1980 c
16 177 s 34;

17 (26) RCW 74.46.350 (Methods of depreciation) and 1999 c 353 s 13 &
18 1980 c 177 s 35;

19 (27) RCW 74.46.360 (Cost basis of land and depreciation base of
20 depreciable assets) and 1999 c 353 s 2, 1997 c 277 s 1, 1991 sp.s. c 8
21 s 18, & 1989 c 372 s 14;

22 (28) RCW 74.46.370 (Lives of assets) and 1999 c 353 s 14, 1997 c
23 277 s 2, & 1980 c 177 s 37;

24 (29) RCW 74.46.380 (Depreciable assets) and 1993 sp.s. c 13 s 5,
25 1991 sp.s. c 8 s 12, & 1980 c 177 s 38;

26 (30) RCW 74.46.390 (Gains and losses upon replacement of
27 depreciable assets) and 1980 c 177 s 39;

28 (31) RCW 74.46.410 (Unallowable costs) and 2007 c 508 s 1, 2001 1st
29 sp.s. c 8 s 3, 1998 c 322 s 17, 1995 1st sp.s. c 18 s 97, 1993 sp.s. c
30 13 s 6, 1991 sp.s. c 8 s 15, 1989 c 372 s 2, 1986 c 175 s 3, 1983 1st
31 ex.s. c 67 s 17, & 1980 c 177 s 41;

32 (32) RCW 74.46.431 (Nursing facility medicaid payment rate
33 allocations--Components--Minimum wage--Rules) and 2008 c 263 s 2, 2007
34 c 508 s 2, 2006 c 258 s 2, 2005 c 518 s 944, 2004 c 276 s 913, 2001 1st
35 sp.s. c 8 s 5, 1999 c 353 s 4, & 1998 c 322 s 19;

36 (33) RCW 74.46.433 (Variable return component rate allocation) and
37 2006 c 258 s 3, 2001 1st sp.s. c 8 s 6, & 1999 c 353 s 9;

1 (34) RCW 74.46.435 (Property component rate allocation) and 2001
2 1st sp.s. c 8 s 7, 1999 c 353 s 10, & 1998 c 322 s 29;

3 (35) RCW 74.46.437 (Financing allowance component rate allocation)
4 and 2001 1st sp.s. c 8 s 8 & 1999 c 353 s 11;

5 (36) RCW 74.46.439 (Facilities leased in arm's-length agreements--
6 Recomputation of financing allowance--Reimbursement for annualized
7 lease payments--Rate adjustment) and 1999 c 353 s 12;

8 (37) RCW 74.46.441 (Public disclosure of rate-setting information)
9 and 1998 c 322 s 20;

10 (38) RCW 74.46.445 (Contractors--Rate adjustments) and 1999 c 353
11 s 15;

12 (39) RCW 74.46.475 (Submitted cost report--Analysis and adjustment
13 by department) and 1998 c 322 s 21, 1985 c 361 s 13, & 1983 1st ex.s.
14 c 67 s 23;

15 (40) RCW 74.46.485 (Case mix classification methodology) and 1998
16 c 322 s 22;

17 (41) RCW 74.46.496 (Case mix weights--Determination--Revisions) and
18 2006 c 258 s 4 & 1998 c 322 s 23;

19 (42) RCW 74.46.501 (Average case mix indexes determined quarterly--
20 Facility average case mix index--Medicaid average case mix index) and
21 2006 c 258 s 5, 2001 1st sp.s. c 8 s 9, & 1998 c 322 s 24;

22 (43) RCW 74.46.506 (Direct care component rate allocations--
23 Determination--Quarterly updates--Fines) and 2007 c 508 s 3, 2006 c 258
24 s 6, & 2001 1st sp.s. c 8 s 10;

25 (44) RCW 74.46.508 (Direct care component rate allocation--
26 Increases--Rules) and 2003 1st sp.s. c 6 s 1 & 1999 c 181 s 2;

27 (45) RCW 74.46.511 (Therapy care component rate allocation--
28 Determination) and 2008 c 263 s 3, 2007 c 508 s 4, & 2001 1st sp.s. c
29 8 s 11;

30 (46) RCW 74.46.515 (Support services component rate allocation--
31 Determination--Emergency situations) and 2008 c 263 s 4, 2001 1st sp.s.
32 c 8 s 12, 1999 c 353 s 7, & 1998 c 322 s 27;

33 (47) RCW 74.46.521 (Operations component rate allocation--
34 Determination) and 2007 c 508 s 5, 2006 c 258 s 7, 2001 1st sp.s. c 8
35 s 13, 1999 c 353 s 8, & 1998 c 322 s 28;

36 (48) RCW 74.46.531 (Department may adjust component rates--
37 Contractor may request--Errors or omissions) and 1998 c 322 s 31;

1 (49) RCW 74.46.533 (Combined and estimated rebased rates--
2 Determination--Hold harmless provision) and 2007 c 508 s 6;
3 (50) RCW 74.46.600 (Billing period) and 1980 c 177 s 60;
4 (51) RCW 74.46.610 (Billing procedure--Rules) and 1998 c 322 s 32,
5 1983 1st ex.s. c 67 s 33, & 1980 c 177 s 61;
6 (52) RCW 74.46.620 (Payment) and 1998 c 322 s 33 & 1980 c 177 s 62;
7 (53) RCW 74.46.625 (Supplemental payments) and 1999 c 392 s 1;
8 (54) RCW 74.46.630 (Charges to patients) and 1998 c 322 s 34 & 1980
9 c 177 s 63;
10 (55) RCW 74.46.640 (Suspension of payments) and 1998 c 322 s 35,
11 1995 1st sp.s. c 18 s 112, 1983 1st ex.s. c 67 s 34, & 1980 c 177 s 64;
12 (56) RCW 74.46.650 (Termination of payments) and 1998 c 322 s 36 &
13 1980 c 177 s 65;
14 (57) RCW 74.46.660 (Conditions of participation) and 1998 c 322 s
15 37, 1992 c 215 s 1, 1991 sp.s. c 8 s 13, & 1980 c 177 s 66;
16 (58) RCW 74.46.680 (Change of ownership--Assignment of department's
17 contract) and 1998 c 322 s 38, 1985 c 361 s 2, & 1980 c 177 s 68;
18 (59) RCW 74.46.690 (Change of ownership--Final reports--Settlement)
19 and 1998 c 322 s 39, 1995 1st sp.s. c 18 s 113, 1985 c 361 s 3, 1983
20 1st ex.s. c 67 s 36, & 1980 c 177 s 69;
21 (60) RCW 74.46.700 (Resident personal funds--Records--Rules) and
22 1991 sp.s. c 8 s 19 & 1980 c 177 s 70;
23 (61) RCW 74.46.711 (Resident personal funds--Conveyance upon death
24 of resident) and 2001 1st sp.s. c 8 s 14 & 1995 1st sp.s. c 18 s 69;
25 (62) RCW 74.46.770 (Contractor appeals--Challenges of laws, rules,
26 or contract provisions--Challenge based on federal law) and 1998 c 322
27 s 40, 1995 1st sp.s. c 18 s 114, 1983 1st ex.s. c 67 s 39, & 1980 c 177
28 s 77;
29 (63) RCW 74.46.780 (Appeals or exception procedure) and 1998 c 322
30 s 41, 1995 1st sp.s. c 18 s 115, 1989 c 175 s 159, 1983 1st ex.s. c 67
31 s 40, & 1980 c 177 s 78;
32 (64) RCW 74.46.790 (Denial, suspension, or revocation of license or
33 provisional license--Penalties) and 1980 c 177 s 79;
34 (65) RCW 74.46.820 (Public disclosure) and 2005 c 274 s 356, 1998
35 c 322 s 43, 1985 c 361 s 14, 1983 1st ex.s. c 67 s 41, & 1980 c 177 s
36 82;
37 (66) RCW 74.46.835 (AIDS pilot nursing facility--Payment for direct
38 care) and 1998 c 322 s 46;

- 1 (67) RCW 74.46.900 (Severability--1980 c 177) and 1980 c 177 s 93;
2 (68) RCW 74.46.901 (Effective dates--1983 1st ex.s. c 67; 1980 c
3 177) and 1983 1st ex.s. c 67 s 49, 1981 1st ex.s. c 2 s 10, & 1980 c
4 177 s 94;
5 (69) RCW 74.46.902 (Section captions--1980 c 177) and 1980 c 177 s
6 89;
7 (70) RCW 74.46.905 (Severability--1983 1st ex.s. c 67) and 1983 1st
8 ex.s. c 67 s 43;
9 (71) RCW 74.46.906 (Effective date--1998 c 322 §§ 1-37, 40-49, and
10 52-54) and 1998 c 322 s 55; and
11 (72) RCW 74.46.907 (Severability--1998 c 322) and 1998 c 322 s 56.

12 NEW SECTION. **Sec. 12.** A new section is added to chapter 74.46 RCW
13 to read as follows:

14 Rates under the nursing facility medicaid payment system for care
15 provided during the period before July 1, 2010, shall continue to be
16 calculated and settled on the basis of the statutes and rules in effect
17 during that period.

18 **Sec. 13.** RCW 74.46.835 and 1998 c 322 s 46 are each amended to
19 read as follows:

20 (1) Payment for direct care at the pilot nursing facility in King
21 county designed to meet the service needs of residents living with
22 AIDS, as defined in RCW 70.24.017, and as specifically authorized for
23 this purpose under chapter 9, Laws of 1989 1st ex. sess., shall be
24 exempt from case mix methods of rate determination set forth in this
25 chapter and shall be exempt from ((the)) a direct care metropolitan
26 statistical area peer group cost limitation ((set forth in this
27 chapter)).

28 (2) Direct care component rates at the AIDS pilot facility shall be
29 based on direct care reported costs at the pilot facility, ((utilizing
30 the same three year, rate setting cycle prescribed for other nursing
31 facilities, and)) as supported by a staffing benchmark based upon a
32 department-approved acuity measurement system.

33 (3) The provisions of RCW 74.46.421 and all other rate-setting
34 principles, cost lids, and limits, including settlement ((as provided
35 in RCW 74.46.165)), shall apply to the AIDS pilot facility.

36 (4) This section applies only to the AIDS pilot nursing facility.

1 NEW SECTION. **Sec. 14.** Sections 2 through 4 and 11 of this act
2 take effect July 1, 2010.

3 NEW SECTION. **Sec. 15.** Sections 5 through 10 and 12 through 13 of
4 this act take effect July 1, 2009.

5 NEW SECTION. **Sec. 16.** 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.

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