S-1235.1

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**SENATE BILL 5802**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Becker and Keiser

AN ACT Relating to assisted living payment rates; amending RCW 74.39A.030 and 74.39A.320; creating new sections; providing an effective date; and declaring an emergency.

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

NEW SECTION. **Sec.**  The legislature finds the population of senior citizens who utilize medicaid home and community‑based long‑term care services will more than double over the next few years and as such the legislature finds the need to maintain an array of services in all service settings to address this growing population. Transparency in payment rate methodology for residential providers is necessary to safeguard against unnecessary utilization of services and to assure that payments are consistent with efficiency, economy, and quality of care in accordance with federal requirements for methods of payment for medicaid service. While the client assessment and classification system utilized to align payment with client acuity are established in department rule; the principles and procedures for provider payments are not found in rule, and are not transparent to the public or the providers. As such, the baseline data and payment methodology for publicly funded long‑term care residential services for vulnerable seniors and adults with disabilities has not been reviewed or updated since 2001. It is the intent of the legislature to outline the fundamental considerations in the current payment system and to establish a consistent and transparent practice of reviewing and updating the foundational data used within the current payment system.

**Sec.**  RCW 74.39A.030 and 2012 c 10 s 66 are each amended to read as follows:

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

(2) In expanding home and community services, the department shall: (a) Take full advantage of federal funding available under Title XVIII and Title XIX of the federal social security act, including home health, adult day care, waiver options, and state plan services; and (b) be authorized to use funds available under its community options program entry system waiver granted under section 1915(c) of the federal social security act to expand the availability of in-home, adult residential care, adult family homes, enhanced adult residential care, and assisted living services. By June 30, 1997, the department shall undertake to reduce the nursing home medicaid census by at least one thousand six hundred by assisting individuals who would otherwise require nursing facility services to obtain services of their choice, including assisted living services, enhanced adult residential care, and other home and community services. If a resident, or his or her legal representative, objects to a discharge decision initiated by the department, the resident shall not be discharged if the resident has been assessed and determined to require nursing facility services. In contracting with nursing homes and assisted living facilities for enhanced adult residential care placements, the department shall not require, by contract or through other means, structural modifications to existing building construction.

(3)(a) The department shall by rule establish principles and procedures for payment rates for home and community services ((~~that support the provision of cost-effective care~~))based on the client assessment and classification system established in department rules. The payment rates must support the provision of cost-effective care and must be consistent with efficiency, economy, and quality of care in accordance with federal requirements for methods of payment for medicaid service. The payment rates shall be calculated and modeled utilizing the following factors:

(i) Salary and wage costs shall be based on data published from the United States bureau of labor and statistics;

(ii) Payroll taxes and fringe benefit costs shall be based on data from the published nursing facility medicaid cost report;

(iii) Operational costs shall be based on data from the published nursing facility medicaid cost reports and shall include relevant costs including, but not limited to, costs for supplies, utilities, food, business and operating and sales taxes, and required insurance;

(iv) Staff service hours shall be based on the relative resource differences identified through a time study of direct care time recorded for care and health related tasks of a statistically valid sample size of medicaid contracted assisted living facilities as follows:

(A) On or before June 30, 2017, the results of the 2001/2002 time study shall serve as the benchmark for staff service hours.

(B) Beginning July 1, 2015, a new time study shall be conducted and here to forward shall be updated no less than once every ten years.

(C) Beginning July 1, 2017, the 2015 time study shall serve as the benchmark for staff service hours;

(v) Payment for capital costs shall be based on the fair rental value for one unit for one day. The base for capital costs shall include valuation for land, building, and fixed and movable equipment as follows:

(A) The average price per square foot for new assisted living construction in Washington state based upon data from the marshall valuation service;

(B) Costs for movable equipment based on data from the published nursing facility medicaid cost report; and

(C) Land values as determined by assisted living assessed values using a calculation that divides the assessed value by size standards based on the median number of licensed beds by area and occupancy rates based on a blend of data collected from lenders, developers, appraisers, and assisted living providers.

(b) Effective July 1, 2015, (a)(i), (ii), and (iii) of this subsection shall be rebased to source data from calendar year 2013, which shall serve as the basis for rates from July 1, 2015, through June 30, 2017. Beginning July 1, 2017, source data shall be rebased biennially during every odd-numbered year thereafter using data from two years prior to the rebase period, so data for calendar year 2015 is used for July 1, 2017, through June 30, 2019, and so forth.

(c) If source data identified in (a)(i), (ii), or (iii) of this subsection is no longer published, the department must substitute another comparable data source.

(d) Payment rates established under this section shall be calculated based on the median of the data factors required in (a) of this subsection according to geographical peer groups, and allocated based on medical, cognitive, behavioral, and personal care needs according to the client assessment and classification system established in department rules. An annual adjustment factor may be applied for economic trends and conditions by a factor provided in the biennial appropriations act.

(e) The current funding rate component is established each fiscal year to address assisted living facility mandated costs not found in the base year calculations supporting the established rate components as calculated per (a), (b), (c), and (d) of this subsection.

(f) In the event of any conflict between ((~~any such rule~~))department rules established under this section and a collective bargaining agreement entered into under RCW 74.39A.270 and 74.39A.300, the collective bargaining agreement prevails.

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

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

NEW SECTION. **Sec.**  The department of social and health services shall conduct a time study of a statistically valid sample size of assisted living facilities for the level of staff resource hours required according to the classification groups for client assessed needs established in department rule. The department of social and health services shall review the current regional payment structure of King, metropolitan, and nonmetropolitan counties for potential revisions due to compression issues with wages and a cost‑of‑living comparison. On or before December 15, 2015, the department shall provide a progress report and a summary of data collection to relevant legislative committees, the office of financial management, Washington health care association, and LeadingAge Washington. The final time study report must be completed on or before July 1, 2016, and shall be provided to these groups for review and comment no less than thirty days prior to finalization.

**Sec.**  RCW 74.39A.320 and 2012 c 10 s 67 are each amended to read as follows:

(1) To the extent funds are appropriated for this purpose, the department shall establish a ((~~capital add-on rate~~))medicaid access incentive payment, not less than the July 1, 2005, capital add‑on rate established by the department, for those assisted living facilities contracting with the department that have a medicaid occupancy percentage of sixty percent or greater.

(2) Effective for July 1, 2006, and for each July 1st rate‑setting period thereafter, the department shall determine the facility's medicaid occupancy percentage using the last six months' medicaid resident days from the preceding calendar year divided by the product of all its licensed assisted living facility beds irrespective of use, times calendar days for the six‑month period. For the purposes of this section, medicaid resident days include those clients who are enrolled in a medicaid managed long‑term care program, including but not limited to the program for all inclusive care and the medicaid integration project.

(3) The medicaid occupancy percentage established beginning on July 1, 2006, and for each July 1st thereafter, shall be used to determine whether an assisted living facility qualifies for the ((~~capital add-on rate~~))medicaid access incentive payment under this section. Those facilities that qualify for the ((~~capital add-on rate~~))medicaid access incentive payment shall receive the ((~~capital add-on rate~~))medicaid access incentive payment throughout the applicable fiscal year.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

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