SENATE BILL REPORT
SB 6240

As Reported by Senate Committee On:
Health Care, February 4, 2016

Title: An act relating to nursing home facilities.

Brief Description: Regulating nursing home facilities.

Sponsors: Senators Parlette, Keiser, Becker, Cleveland, Bailey, McAuliffe and Hobbs.

Brief History:
Committee Activity: Health Care: 1/19/16, 2/04/16 [DPS-WM].

SENATE COMMITTEE ON HEALTH CARE

Majority Report: That Substitute Senate Bill No. 6240 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Becker, Chair; Dammeier, Vice Chair; Cleveland, Ranking Minority Member; Angel, Bailey, Baumgartner, Brown, Conway, Frockt, Jayapal, Keiser, Parlette and Rivers.

Staff: Kathleen Buchli (786-7488)

Background: The Washington State Medicaid (Medicaid) program includes long-term care assistance and services provided to low-income individuals. It is administered by the state in compliance with federal laws and regulations and is jointly financed by the federal and state government. The federal funds are matching funds, and are referred to as the Federal Financial Participation, or the Federal Medical Assistance Percentage (FMAP). The FMAP is calculated based on average per-capita income and is usually between 50 and 51 percent for Washington. Typically the state pays the remainder using the state general fund. Clients may be served in their own homes, in community residential settings, and in skilled nursing facilities.

There are approximately 240 skilled nursing facilities licensed in Washington to serve about 10,000 Medicaid-eligible clients. Skilled nursing facilities are licensed by the Department of Social and Health Services (DSHS) and provide 24-hour supervised nursing care, personal care, therapies, nutrition management, organized activities, social services, laundry services, and room and board to three or more residents. The Medicaid nursing home payment system is administered by DSHS.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 2015, the Legislature passed SHB 1274 which established a value-based system for nursing home rates. Beginning July 1, 2016, payments to nursing homes for services must be based on a system having three main components: direct care, indirect care, and capital. Both the direct care and indirect care components must be regionally adjusted for nonmetropolitan and metropolitan statistical areas, and the indirect care component must be paid at a fixed rate, based on 90 percent of facility-wide median costs. The capital component must use a fair market rental system to set a price per bed and be adjusted for the age of the facility, using a minimum occupancy assumption of 90 percent. Beginning July 1, 2016, a quality incentive must be offered.

SHB 1274 also established minimum staffing standards for nursing homes and directed DSHS to adopt rules establishing financial penalties for facilities out of compliance with minimum staffing standards.

Summary of Bill (Recommended Substitute): The direct care component must be regionally adjusted using county wide wage index information available through the United States Department of Labor's Bureau of Labor statistics rather than using the nonmetropolitan and metropolitan statistical areas. The direct care component rate, the indirect care component rate, and the capital component rate must be adjusted to comply with the appropriations act.

Beginning July 1, 2016, the fair rental rate allocation for each facility must be determined according to the calculation provided in statute. These calculations include consideration of the allowable nursing home square footage by the RSMeans rental rate, the number of licensed beds yielding the gross unadjusted building value, an equipment allowance, and average age of the facility.

The quality incentive must be determined by calculating an overall facility quality score composed of four to six quality measures. Initially, this is based on quality measures for the percentage of long-stay residents with moderate to severe pain, pressure ulcers, and urinary tract infections, and who have experienced falls resulting in major injury. The quality incentive rates must be adjusted semi-annually. Beginning July 1, 2017, the percentage of short-stay residents who newly received an antipsychotic medication and the percents of direct care staff turnover must be added as quality measures.

Financial penalties for non-compliance with minimum staffing standards may not be issued during the July 1, 2016 through September 30, 2016 implementation period. Facilities found in non-compliance during the implementation period must be provided with a written notice identifying the staffing deficiency and requiring the facility to provide a correction plan. Financial penalties begin October 1, 2016, and must be established based on a formula that calculates the cost of wages and benefits for the missing staff hours. The first penalty must be smaller than subsequent non-compliance penalties. Penalties may not be more than 200 percent of the wage and benefit costs that would have otherwise been expended to achieve the required staffing minimum for the quarter.

An exception must be established allowing geriatric behavioral health workers to be recognized in the minimum staffing requirements as part of the direct care service delivery to

individuals suffering from mental illness. Limited exceptions must be established for facilities demonstrating a good faith effort to hire and retain staff or to hire a registered nurse for the last eight hours of required coverage per day. DSHS may limit the admission of new residents, based on medication conditions or complexities when a registered nurse is not on-site and readily available.

A limited exception to the 3.4 hours per resident per day staffing requirement is provided, limited as follows:

- The facility does not qualify for the exemption if it is unable to make the staffing levels due to a deliberate decision of the facility or due to neglect.
- The facility must be making progress towards meeting the staffing requirement such as offering financial incentives or taking steps towards increasing employee retention.
- No exception is provided for facilities after they have met their 3.4 hour requirement.
- Exceptions are only permitted for six months and are not available after June 30, 2018.

A limited exception to the requirement that large nonessential community providers have a registered nurse be on duty directly supervising resident care twenty-four hours per day, seven days per week is provided, limited as follows:

- An exception may be provided to facilities that can demonstrate a good faith effort to hire a registered nurse for the last eight hours of required coverage per day. Wages and benefits offered and the availability of registered nurses in the area must be considered.
- A one-year exception may be granted and be renewable for use to three years. However, DSHS may limit new admissions.
- Information on the exception must be included in DSHS's nursing home locator.

EFFECT OF CHANGES MADE BY HEALTH CARE COMMITTEE (Recommended Substitute): The direct care component rate, the indirect care component rate, and the capital component rate must be adjusted to comply with the appropriations act. The quality care component must be determined using four quality measures in fiscal year 2017 and six quality measure in fiscal year 2018. These additional quality measures include the percent of short-stay residents who newly received antipsychotic medication and the percentage of direct care staff turnover.

A limited exception to the 3.4 hours per resident per day staffing requirement is provided, limited as follows:

- The facility does not qualify for the exemption if it is unable to make the staffing levels due to a deliberate decision of the facility or due to neglect.
- The facility must be making progress towards meeting the staffing requirement such as offering financial incentives or taking steps towards increasing employee retention.
- No exception is provided for facilities after they have met their 3.4 hour requirement.
- Exceptions are only permitted for six months and are not available after June 30, 2018.

If an exception to the registered nurse requirement has been granted, that information must be included in DSHS's nursing home locator.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This bill is a result of a work group that met over the interim and simplifies the calculation used for nursing facility payments by reducing the number of factors to be considered in making this calculation. This bill is consistent with the recommendations made by the work group in its report. Consensus has not been reached relating to the requirement of staffing for a minimum of 3.4 hours per resident day of direct care. Limited exceptions are allowed in meeting this staffing requirement. We are moving to having the fifth highest staffing requirement in the country. Putting the point structure in the bill for calculating the quality score is problematic and DSHS should be provided authority in rule relating to a point system. The fair market value calculation is subject to the budget dial but it is the only element that is subject to the budget dial, this requirement should be for all components. Concerns have been raised about putting in the RSMeans formula in statute which may be found to be a delegation of the Legislature's authority; it would be better to refer to the RSMeans formula as a guideline for determining the fair market value. The calculations in the bill incentive facilities to put in improvements. The funding for the current system in not adequate and needs to be supplemented by the general fund. The quality incentive enhancements need to be further worked. We oppose the exception to the staffing requirements which would apply to only a few facilities. If the facility has an exemption for the 24 hour nursing care requirement, that information should be posted on-line.

OTHER: We are concerned with the stakeholder process. The bill should only include consensus decisions, but it includes parts that have not been agreed to by all stakeholders. Need an exception for the requirement for 24 hour nursing care. The quality incentives are meant to change from year to year and other factors should be added such as staff turnover and bladder and bowel control of residents. The staffing levels should be put into statute and the hourly requirement should be retained without exemptions or moratoriums. Small rural facilities are impacted by the bill; the hold harmless provisions need to be extended to these facilities beyond one biennium. The exemption to quality staffing standards does not represent the work of the workgroup. Facilities know the staffing requirement is coming and they should already be working to retain staff and the deadlines are needed.

Persons Testifying on Original Bill: PRO: Senator Parlette, prime sponsor; Robin Dale, Washington Health Care Association; Deb Murphy, Leading Age Washington; Bill Moss, Department of Social and Health Services; Patricia Hunter, State Long-Term Care Ombuds.

OTHER: Lani Todd, SEIU 775; Shelly Hughes, SEIU 775/Nursing Home Worker; Jessica Field, SEIU 775/ Nursing Home CNA; Len Mc Comb, Washington State Hospital Association; Hilke Faber, RESIDENT COUNCILS OF WA; Trent House, Providence Health and Services.

Persons Signed In To Testify But Not Testifying on Original Bill: No one.