

# SENATE BILL REPORT

## SB 6250

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As of January 29, 2020

**Title:** An act relating to nursing facilities.

**Brief Description:** Concerning nursing facilities.

**Sponsors:** Senators Keiser, Conway, Cleveland, Hasegawa, Wilson, C., Das and Van De Wege;  
by request of Department of Social and Health Services.

**Brief History:**

**Committee Activity:** Health & Long Term Care: 1/27/20.

### Brief Summary of Bill

- Modifies the Department of Social and Health Services' (DSHS) skilled nursing facility (SNF) inspection requirements so they are consistent with federal law.
- Removes the three-year renewal limit for the 24/7 registered nurse staffing exception.
- Modifies the SNF Medicaid rate methodology so rates are rebased every year rather than every other year.
- Authorizes a one-time inflationary adjustment for fiscal year 2021 rates, using the 24-month consumer-price index for all urban consumers.
- Requires the DSHS to report 2017- 2019 rates paid versus incurred costs for the Legislature to determine the need for regular inflationary adjustments.

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Staff:** LeighBeth Merrick (786-7445)

**Background:** Long-term services and supports are for individuals who need assistance with daily living tasks such as bathing, dressing, ambulation, transfers, toileting, medication assistance or administration, personal hygiene, transportation, and other health-related tasks. DSHS administers Medicaid funded long-term services and supports to eligible individuals in

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Washington State. Individuals may receive these services in their home, in an adult day center, in an adult family home, in an assisted living facility, or in a SNF.

There are approximately 200 licensed SNFs in Washington to serve about 9,400 Medicaid clients per month. SNFs are licensed by 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.

Inspections and Surveys. DSHS is required to conduct at least one unannounced inspection of SNFs prior to license renewal. The Centers for Medicare and Medicaid Services (CMS) issues regulations outlining the standards for surveying SNFs for compliance with state and federal regulations. CMS requires that the surveying state agency conduct an unannounced standard survey of each SNF no less than 15 months after the previous survey, when necessary after reviewing complaint allegations, and when a SNF is identified as having provided substandard quality of care.

24/7 Registered Nurse Staffing Exception. A large, non-essential SNF has more than 60 licensed beds and is located within a commuting distance radius of less than 40 minutes by automobile from another SNF. Legislation was passed in 2015 requiring large, non-essential SNFs to have a registered nurse on duty directly supervising resident care 24 hours per day, seven days per week. Under current law, SNFs may receive a limited exception if they demonstrate a good faith effort to hire a registered nurse for the last eight hours of required coverage per day. The exception may be granted for one year and may be renewable for up to three consecutive years. When granting an exception, DSHS may consider the wages and benefits offered and the availability of registered nurses in the particular geographic area. DSHS along with a stakeholder work group must conduct a review of the exceptions process to determine if it is still necessary.

Skilled Nursing Facility Medicaid Rate Methodology. The Medicaid SNF payment methodology is administered by DSHS. The Medicaid rates in Washington are unique to each facility and reflect the client acuity of each SNF's residents. In 2015, the Legislature established a new methodology for SNF payment rates. The methodology consists of three primary components: direct care, indirect care, and capital. The direct care component includes nursing and related care provided to residents, such as food, laundry, and dietary services. The indirect care rate component includes administrative expenses, maintenance costs, tax reimbursements, and housekeeping services.

Rates are based on cost reports submitted by SNFs to DSHS at the end of each calendar year. The direct and indirect care rate components are rebased in odd-numbered state fiscal years using cost reports submitted by nursing facilities for the period two calendar years previous. For example, rates will be rebased in fiscal year (FY) 2021 using calendar year 2018 cost reports. These rates will remain in effect through FY 2022 until rates are rebased again in FY 2023 using calendar year 2020 cost reports.

If, after rebasing, the percentage increase in the statewide average daily rate is less than the average rate of inflation, as determined by the skilled nursing facility market basket index published by the CMS, DSHS is authorized to further increase rates to match the average rate of inflation. For example, if DSHS saw a 2.0 percent growth in direct and indirect care

costs, but a 4.8 percent rate of inflation, it would be authorized to increase the rate by an additional 2.8 percent. DSHS has never had to exercise this authority. While this allows DSHS to ensure that rates at least match the current rate of inflation, the methodology does not include a step of bringing costs from the cost report year up to the current year's dollars.

**Summary of Bill:** Inspections and Surveys. DSHS is no longer required to conduct an unannounced inspection prior to a SNF's license renewal, and instead is required to conduct unannounced and periodic inspections in compliance with federal regulations.

24/7 Registered Nurse Staffing Exception. In granting an exception to the 24/7 registered nurse staffing requirement, DSHS must consider the competitiveness of the provider's wages and benefits compared to other SNFs in comparable areas of the state, as well as the provider's recruitment and retention efforts. The three consecutive year limit for exception renewals is removed so exceptions may be renewed beyond every year regardless of exceptions received previously. By August 1, 2023, and every three years thereafter, DSHS and a stakeholder work group must review the enforcement and citation actions taken against providers that received an exception compared to those without an exception. In its review, the group must also compare referrals to the Long-Term Care Ombudsman. A report including the findings of these comparisons, along with a recommendation as to whether the exception process should continue, is due to the Legislature by December 1st of each year.

Medicaid Rate Methodology. Beginning with rates paid on July 1, 2020, the direct and indirect care components must be rebased every year. A one-time inflationary adjustment must be made in FY 2021 using a 24-month consumer price index for all urban consumers, as published by the Federal Bureau of Labor Statistics.

To determine the necessity of regular inflationary adjustments, DSHS must review rates paid from 2017-2019 compared to the costs reported by SNFs for the time period, and report its findings to the Legislature by December 1, 2020. DSHS no longer has authority to increase rates by the difference between the percentage increase after rebasing and the average rate of inflation for SNFs.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: Annual rebasing is critical for rates to stay current. DSHS intends to offer amendatory language to address the one time inflationary adjustment. The annual shortfall between the rates versus the costs is \$116 to \$120. The vast majority of SNFs are operating in the red with negative profit margins due to expenses far exceeding rates. Many of the expenses are unfunded mandates such as increase B&O taxes, minimum wage, and mandatory staffing requirements. This is leading to a large number of SNF closures which have negatively impacted the SNF residents and their families, and the employees. Many of the residents have to be relocated out of their community. An ongoing

inflationary factor is critical to ensure rates keep pace with costs. We prefer the inflationary factors in SB 6515 and SB 6396 and both bills pulling the rebase forward to the month after the bill is passed. This is necessary for the SNFs that are barely hanging on. We support the changes to the RN 24/7 staffing exception.

**Persons Testifying:** PRO: Senator Karen Keiser, Prime Sponsor; Robin Dale, Washington Health Care Association; Kate Fiola, EmpRes Health Care; Sandra Hurd, Avamere Health Services; Melanie Smith, Washington State Long Term Care Ombuds Program; Heather Dartt, Martha & Mary; Cliff Sears, McKay HealthCare; Serge Newberry, Five Oaks Healthcare.

**Persons Signed In To Testify But Not Testifying:** PRO: Adam Glickman, Secretary Treasurer, SEIU 775; Sherylon Hughes, nursing home worker, Executive Board Member, SEIU 775; Bill Moss, Department of Social and Health Services.