SENATE BILL REPORT
SB 6515

As Reported by Senate Committee On:
Health & Long Term Care, February 3, 2020
Ways & Means, February 11, 2020

Title: An act relating to the medicaid payment methodology for skilled nursing facilities.

Brief Description: Adjusting the medicaid payment methodology for skilled nursing facilities. [**Revised for 2nd Substitute:** Concerning nursing facilities.]

Sponsors: Senators Van De Wege, Randall, Mullet, Takko, Lovelett, Liias, Conway, Hasegawa and Wilson, C..

Brief History:
Committee Activity: Health & Long Term Care: 1/27/20, 2/03/20 [DPS-WM].
Ways & Means: 2/06/20, 2/11/20 [w/oRec, DP2S, DNP].

Brief Summary of Second Substitute Bill

- Aligns the Department of Social and Health Services' (DSHS) skilled nursing facility (SNF) inspection requirements with federal law.
- Removes the three-year renewal limit for the 24/7 registered nurse staffing exception.
- Modifies the skilled nursing facility Medicaid rate methodology so rates are rebased every year rather than every other year and increases are paid in a proportion relative to the percentage of total occupancy.
- Authorizes an annual inflationary adjustment for three years with it expiring on June 30, 2023.
- Includes a one-time rebase for the rates paid beginning May 1, 2020, or the month after the bill is enacted, whichever comes later.
- Requires the DSHS to report 2018-2021 rates paid versus incurred costs

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for the Legislature to determine the need for regular inflationary adjustments.

- Limits a facility that holds a Medicaid bed for a resident who has been discharged to the hospital to no more than three days; although upon the resident's return, the facility will be eligible for up to an additional four days.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 6515 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Randall, Vice Chair; O'Ban, Ranking Member; Becker, Conway, Dhingra, Frockt, Muzzall, Rivers and Van De Wege.

Staff: LeighBeth Merrick (786-7445)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6515 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Brown, Assistant Ranking Member, Operating; Becker, Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Muzzall, Pedersen, Schoesler, Van De Wege, Wagoner, Warnick and Wilson, L.

Minority Report: Do not pass.

Signed by Senator Honeyford, Assistant Ranking Member, Capital.

Minority Report: That it be referred without recommendation.

Signed by Senator Rivers.

Staff: Maria Hovde (786-7474)

Background: 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.

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 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.

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 Centers for Medicare & Medicaid Services, 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 (Second Substitute): 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 and direct care rate increases must be paid in a proportion that is relative to the percentage of total occupancy of a facility as follows:

- facilities with occupancy less than or equal to 50 percent shall receive 50 percent of the rate increase;
- facilities with occupancy greater than 50 percent but less than 80 percent shall receive 75 percent of the rate increase; and
- facilities with occupancy greater than 80 percent shall receive 100 percent of the rate increase.

Beginning July 1, 2020, DSHS is required to annually collect occupancy data from each facility.

A one-time rebase must occur for the rates paid beginning May 1, 2020, or the month after the bill is enacted, whichever comes last, through June 30, 2020, using 2018 calendar year

cost report information.

Beginning July 1, 2020, and annually through June 30, 2023, the direct and indirect components of the base year costs must be adjusted for inflation from the midpoint of the base year to the beginning of the rate year using the most recent calendar year 12-month average consumer price index for all urban consumers in the medical expenditure category of nursing homes and adult day services as published by the United States Bureau of Labor Statistics.

Beginning July 1, 2023, a facility specific rate add-on equal to the inflationary adjustment that the facility received in fiscal year 2023 must be added to the rate.

To determine the impacts of annual inflationary adjustments, DSHS must review rates paid from 2018-2021 compared to the costs reported by SNFs for the time period, and report its findings to the Legislature by December 1, 2022. 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.

Beginning July 1, 2020, if a facility holds a Medicaid bed for a resident who has been discharged to the hospital, the reimbursement for the bed-hold is limited to no more than three days; although if the resident returns to the facility, the facility will be eligible for reimbursement for up to an additional four days.

Any savings as a result of over appropriations associated with the rebase for FY 2021 must be utilized to fund the new methodology.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Requires that direct care rate increases be paid in a proportion that is relative to the percentage of total occupancy of a facility as follows:
  facilities with occupancy less than or equal to 50 percent shall receive 50 percent of the rate increase;
  facilities with occupancy greater than 50 percent, but less than 80 percent, shall receive 75 percent of the rate increase; and
- facilities with occupancy greater than 80 percent shall receive 100 percent of the rate increase.
- Requires DSHS to annually collect occupancy data from each facility beginning July 1, 2020.
- Limits a facility that holds a Medicaid bed for a resident who has been discharged to the hospital to no more than three days; although if the resident returns, the facility will be eligible for up to an additional four days.

EFFECT OF CHANGES MADE BY HEALTH & LONG TERM CARE COMMITTEE (First Substitute):

- Aligns DSHS SNF survey requirements with federal requirements.
- Removes the three consecutive year renewal limit for the 24/7 registered nurse staffing exception. Modifies the one-time rebasing effective date so it goes into effect on May 1, 2020, or the month after the bill is enacted, whichever comes later.
- Limits the annual inflationary adjustment—CPI-U SNF with a 2 year time factor—to three years with it sunsetting on June 30, 2023.
- Requires DSHS to report on the need for an ongoing inflationary adjustment based on cost/rate comparison for cost report years 2018-2021.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on First Substitute (Health & Long Term Care): *The committee recommended a different version of the bill than what was heard.* PRO: Nursing homes are in dire straits and it is critical we provide them with some relief. 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 like the inflationary factors included in this bill, but we prefer the midpoint to midpoint factor used in SB 6396. We support both this bill and SB 6396 pulling the rebase forward to the month after the bill is passed. This is necessary for the SNFs that are barely hanging on.

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

Persons Signed In To Testify But Not Testifying (Health & Long Term Care): No one.

Staff Summary of Public Testimony on Second Substitute (Ways & Means): *The*

committee recommended a different version of the bill than what was heard. The committee recommended a different version of the bill than what was heard. PRO: This bill is sound policy and takes necessary steps to stabilize the skilled nursing facilities in the state. DSHS estimates the annual shortfall to be around $116 million, a number that has continued to grow over the last couple of years. It is also estimated that costs are growing at 4.1 per year on average. Rates have not kept pace with growing costs of care leading to skilled nursing providers having the worst operating margins in the nation. According to an independent study, 74 percent of providers around the state are operating in the red, 25 percent of those are operating at a negative 13 percent or more. Twenty-five percent of the facilities are operating with an average 14 days cash on hand causing extreme financial instability. The shortfall has led to 10 percent of skilled nursing facilities closing in the last couple of years displacing over 1000 residents. Moving to an annual rebasing system with an inflationary adjustment over the next three years will help close the gap. We do expect an additional closure to be announced this year because the funding is not coming soon enough but we still are hopeful that the one-time early rebase in May instead of July will prevent any other skilled nursing facilities from closing. Asians and Asian Americans make up the largest minority immigrant group in King County. With the closure of Keiro Northwest, Kin on Rehab and Care Center becomes the only skilled nursing facility serving Asian elders in the entire state. Ninety percent of nursing home residents are Medicaid recipients. With wage growth and hiring competition there is no way for us to keep up. Last year, Park Royal Care Center in Longview closed and 38 frail residents who suffered from dementia had be to be relocated. Additionally, 45 employees lost their jobs. Less than half of the displaced residents could be relocated in the area. This bill is imperative and will allow these facilities to maintain financial stability for the most vulnerable individuals.

Persons Testifying (Ways & Means): PRO: Alyssa Odegaard, LeadingAge Washington; Nigel Lo, Kin On Rehab and Care Center; Kate Fiola, EmpRes Health Care; Nick Federici, SEIU 775.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.