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**HOUSE BILL 1645**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Representatives Bateman, Schmick, Callan, Santos, Tharinger, Stonier, and Riccelli

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1 AN ACT Relating to medicaid assisted living payment methodology;  
2 amending RCW 74.39A.032 and 70.129.030; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** The outdated medicaid payment methodology  
5 was replaced by the 2018 legislature with a new payment system that  
6 is based on prevalent wages supported by verifiable, public data and  
7 the hours of care needed for each resident's acuity according to a  
8 time study conducted by the department of social and health services.  
9 While it was intended that the model be fully phased-in, the  
10 legislature finds that this methodology is currently only phased-in  
11 to 60 percent and that medicaid payments for wages have fallen below  
12 the state minimum wage. Assisted living contractors that provide care  
13 for medicaid clients are unable to hire and retain the necessary  
14 workforce. As employers to thousands of nursing staff who are over 40  
15 percent nonwhite or foreign born and predominately older females, it  
16 is essential that these providers are able to keep up with prevailing  
17 wages. The legislature also recognizes that the population aged 79  
18 and older is growing rapidly and it is critical to update state  
19 policies including provider payment rates to ensure the availability  
20 of enrolled medicaid providers is sufficient to serve the number of  
21 beneficiaries who wish to remain within geographic proximity to their

1 own community. The legislature finds assisted living is a valued  
2 partner in providing care to Washington state's low-income elderly  
3 populations and, as such, intends to formalize the medicaid payment  
4 methodology phase-in schedule.

5 **Sec. 2.** RCW 74.39A.032 and 2018 c 225 s 3 are each amended to  
6 read as follows:

7 (1) The department shall establish in rule a new medicaid payment  
8 system for contracted assisted living, adult residential care, and  
9 enhanced adult residential care. Beginning July 1, 2019, payments for  
10 these contracts must be based on the new methodology which must be  
11 phased-in to (~~full~~) 77 percent of the fully funded model by July 1,  
12 2022, and to 85 percent of the fully funded model by July 1, 2023.  
13 Full implementation must be achieved by July 1, 2026, according to  
14 funding made available by the legislature for this purpose. The new  
15 payment system must have these components: Client care, operations,  
16 and room and board.

17 (2) Client care is the labor component of the system and must  
18 include variables to recognize the time and intensity of client care  
19 and services, staff wages, and associated fringe benefits. The wage  
20 variable in the client care component must be adjusted according to  
21 service areas based on labor costs.

22 (a) The time variable is used to weight the client care payment  
23 to client acuity and must be scaled according to the classification  
24 levels utilized in the department's assessment tool. The initial  
25 system shall establish a variable for time using the residential care  
26 time study conducted in 2001 and the department's corresponding  
27 estimate of the average staff hours per client by job position.

28 (b) The wage variable shall include recognition of staff  
29 positions needed to perform the functions required by contract,  
30 including nursing services. Data used to establish the wage variable  
31 must be adjusted so that no baseline wage is below the state minimum  
32 in effect at the time of implementation. The wage variable is a  
33 blended wage based on the federal bureau of labor statistics wage  
34 data and the distribution of time according to staff position.  
35 Blended wages are established for each county and then counties are  
36 arrayed from highest to lowest. Service areas are established and the  
37 median blended wage in each service area becomes the wage variable  
38 for all the assigned counties in that service area. The system must  
39 have no less than two service areas, one of which shall be a high

1 labor cost service area and shall include counties at or above the  
2 ninety-fifth percentile in the array of blended wages.

3 (c) The fringe benefit variable recognizes employee benefits and  
4 payroll taxes. The factor to calculate the percentage of fringe  
5 benefits shall be established using the statewide nursing facility  
6 cost ratio of benefits and payroll taxes to in-house wages.

7 (3) The operations component must recognize costs that are  
8 allowable under federal medicaid rules for the federal matching  
9 percentage. The operations component is calculated at ninety percent  
10 or greater of the statewide median nursing facility costs associated  
11 with the following:

12 (a) Supplies;

13 (b) Nonlabor administrative expenses;

14 (c) Staff education and in-service training; and

15 (d) Operational overhead including licenses, insurance, and  
16 business and (~~occupational~~ [~~occupation~~]) occupation taxes.

17 (4) The room and board component recognizes costs that do not  
18 qualify for federal financial participation under medicaid rules by  
19 compensating providers for the medicaid client's share of raw food  
20 and shelter costs including expenses related to the physical plant  
21 such as property taxes, property and liability insurance, debt  
22 service, and major capital repairs. The room and board component is  
23 subject to the department's and the Washington state health care  
24 authority's rules related to client financial responsibility.

25 (5) Subsections (2) and (3) of this section establish the rate  
26 for medicaid covered services. Subsection (4) of this section  
27 establishes the rate for nonmedicaid covered services.

28 (6) The rates paid on July 1, 2019, shall be based on data from  
29 the 2016 calendar year, except for the time variable under subsection  
30 (2)(a) of this section. The client care and operations components  
31 must be rebased in even-numbered years. Beginning with rates paid on  
32 July 1, 2020, wages, benefits and taxes, and operations costs shall  
33 be rebased using 2018 data.

34 (7) Beginning July 1, 2020, the room and board component shall be  
35 updated annually subject to the department's and the Washington state  
36 health care authority's rules related to client financial  
37 responsibility.

38 **Sec. 3.** RCW 70.129.030 and 2021 c 159 s 23 are each amended to  
39 read as follows:

1 (1) The facility must inform the resident both orally and in  
2 writing in a language that the resident understands of his or her  
3 rights and all rules and regulations governing resident conduct and  
4 responsibilities during the stay in the facility. The notification  
5 must be made prior to or upon admission. Receipt of the information  
6 must be acknowledged in writing.

7 (2) The resident to the extent provided by law or resident  
8 representative to the extent provided by law, has the right:

9 (a) Upon an oral or written request, to access all records  
10 pertaining to himself or herself including clinical records within  
11 twenty-four hours; and

12 (b) After receipt of his or her records for inspection, to  
13 purchase at a cost not to exceed the community standard photocopies  
14 of the records or portions of them upon request and two working days'  
15 advance notice to the facility.

16 (3) The facility shall only admit or retain individuals whose  
17 needs it can safely and appropriately serve in the facility with  
18 appropriate available staff and through the provision of reasonable  
19 accommodations required by state or federal law. Except in cases of  
20 genuine emergency, the facility shall not admit an individual before  
21 obtaining a thorough assessment of the resident's needs and  
22 preferences. The assessment shall contain, unless unavailable despite  
23 the best efforts of the facility, the resident applicant, and other  
24 interested parties, the following minimum information: Recent medical  
25 history; necessary and contraindicated medications; a licensed  
26 medical or other health professional's diagnosis, unless the  
27 individual objects for religious reasons; significant known behaviors  
28 or symptoms that may cause concern or require special care; mental  
29 illness, except where protected by confidentiality laws; level of  
30 personal care needs; activities and service preferences; and  
31 preferences regarding other issues important to the resident  
32 applicant, such as food and daily routine.

33 (4) The facility must inform each resident in writing in a  
34 language the resident or resident representative understands before  
35 admission, and at least once every twenty-four months thereafter of:

36 (a) Services, items, and activities customarily available in the  
37 facility or arranged for by the facility as permitted by the  
38 facility's license; (b) charges for those services, items, and  
39 activities including charges for services, items, and activities not  
40 covered by the facility's per diem rate or applicable public benefit

1 programs; ~~((and))~~ (c) facility policies concerning medicaid  
2 insurance; and (d) the rules of facility operations required under  
3 RCW 70.129.140(2). Each resident and resident representative must be  
4 informed in writing in advance of changes in the availability or the  
5 charges for services, items, or activities, or of changes in the  
6 facility's rules. Except in emergencies, thirty days' advance notice  
7 must be given prior to the change. However, for facilities licensed  
8 for six or fewer residents, if there has been a substantial and  
9 continuing change in the resident's condition necessitating  
10 substantially greater or lesser services, items, or activities, then  
11 the charges for those services, items, or activities may be changed  
12 upon fourteen days' advance written notice.

13 (5) The facility must furnish a written description of residents  
14 rights that includes:

15 (a) A description of the manner of protecting personal funds,  
16 under RCW 70.129.040;

17 (b) A posting of names, addresses, and telephone numbers of the  
18 state survey and certification agency, the state licensure office,  
19 the state ombuds program, and the protection and advocacy systems;  
20 and

21 (c) A statement that the resident may file a complaint with the  
22 appropriate state licensing agency concerning alleged resident abuse,  
23 neglect, and misappropriation of resident property in the facility.

24 (6) Notification of changes.

25 (a) A facility must immediately consult with the resident's  
26 physician, and if known, make reasonable efforts to notify the  
27 resident representative to the extent provided by law when there is:

28 (i) An accident involving the resident which requires or has the  
29 potential for requiring physician intervention;

30 (ii) A significant change in the resident's physical, mental, or  
31 psychosocial status (i.e., a deterioration in health, mental, or  
32 psychosocial status in either life-threatening conditions or clinical  
33 complications).

34 (b) The facility must promptly notify the resident or resident  
35 representative when there is:

36 (i) A change in room or roommate assignment; or

37 (ii) A decision to transfer or discharge the resident from the  
38 facility.

1 (c) The facility must record and update the address, phone  
2 number, and any other contact information of the resident  
3 representative, upon receipt of notice from them.

4 NEW SECTION. **Sec. 4.** (1)(a) The department of social and health  
5 services shall convene a stakeholder work group to develop a  
6 prevailing wage report and reporting process for medicaid providers.  
7 The department must implement the reporting requirement to coincide  
8 with the payment system being phased-in to 85 percent of the fully  
9 funded model. Beginning with the first report and continuing until  
10 the medicaid payment methodology is fully phased-in, the department  
11 shall summarize provider reported information and submit it to the  
12 legislature. The department's summary must include a comparison  
13 between the funding provided to support wages under the medicaid  
14 payment methodology for occupations reported by the providers and the  
15 corresponding prevailing wages paid by contracted assisted living  
16 providers.

17 (b) The stakeholder work group must consist of the assistant  
18 secretary of the department or the assistant secretary's appointed  
19 designee; one representative from each of two associations in  
20 Washington representing assisted living communities; and the long-  
21 term care ombuds or the long-term care ombuds' designee.

22 (c) The report must be based on the following criteria:

23 (i) The reporting requirement may not be administratively  
24 burdensome to either the providers or the department;

25 (ii) The stakeholders must reach majority consensus on the type  
26 of data reported;

27 (iii) A data use agreement must be developed and included in the  
28 reporting process to protect the identity of individual assisted  
29 living providers and the identity of employees in the wage  
30 categories;

31 (iv) The design may be limited to a survey sample, to providers  
32 who meet certain medicaid occupancy thresholds, or both;

33 (v) The timeline and frequency for reporting must be agreed to by  
34 majority consensus; and

35 (vi) The data reported must be validated through an agreed upon  
36 attestation process with supporting documentation determined by  
37 majority consensus.

38 (2) The department shall provide a summary to the legislature of  
39 discharge regulations and notification requirements for assisted

1 living providers by December 30, 2022. Thereafter, the department  
2 shall regularly review and report on the impact of RCW 74.39A.032(1)  
3 on medicaid utilization and access to assisted living.

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