S-4355.2

SENATE BILL 6909

State of Washington 60th Legislature 2008 Regular Session

By Senators Marr, Keiser, and Parlette

Read first time 02/04/08. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to the nursing facility medicaid payment system;
2 amending RCW 74.46.431, 74.46.435, 74.46.511, and 74.46.521; adding a
3 new section to chapter 74.46 RCW; and repealing RCW 74.46.437.

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

5 **Sec. 1.** RCW 74.46.431 and 2007 c 508 s 2 are each amended to read
6 as follows:
7 (1) Effective July 1, 1999, nursing facility medicaid payment rate
8 allocations shall be facility-specific and shall have seven components:
9 Direct care, therapy care, support services, operations, property,
10 financing allowance, and variable return. The department shall
11 establish and adjust each of these components, as provided in this
12 section and elsewhere in this chapter, for each medicaid nursing
13 facility in this state.
14 (2) Component rate allocations in therapy care, support services,
15 variable return, operations, property, and financing allowance for
16 essential community providers as defined in this chapter shall be based
17 upon a minimum facility occupancy of eighty-five percent of licensed
18 beds, regardless of how many beds are set up or in use. For all
19 facilities other than essential community providers, effective July 1,

2001, component rate allocations in direct care, therapy care, support services, variable return, operations, property, and financing allowance shall continue to be based upon a minimum facility occupancy of eighty-five percent of licensed beds. For all facilities other than essential community providers, effective July 1, 2002, through June 30, 2008, the component rate allocations in operations, property, and financing allowance shall be based upon a minimum facility occupancy of ninety percent of licensed beds, regardless of how many beds are set up or in use. For all facilities, effective July 1, 2006, the component rate allocation in direct care shall be based upon actual facility occupancy. For all facilities, effective July 1, 2008, all component rate allocations shall be based upon actual facility occupancy in the base year and in no instance shall the rate be adjusted based on imputed occupancy.

(3) Information and data sources used in determining medicaid payment rate allocations, including formulas, procedures, cost report periods, resident assessment instrument formats, resident assessment methodologies, and resident classification and case mix weighting methodologies, may be substituted or altered from time to time as determined by the department.

(4)(a) Direct care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, direct care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2006, direct care component rate allocations. Adjusted cost report data from 2003 will be used for July 1, 2006, through June 30, 2007, direct care component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, direct care component rate allocations. Effective July 1, 2009, the direct care component rate allocation shall be rebased biennially, and thereafter for each odd-numbered year beginning July 1st, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Direct care component rate allocations based on 1996 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial

appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(c) Direct care component rate allocations based on 1999 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(d) Direct care component rate allocations based on 2003 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 2006, rate, as provided in RCW 74.46.506(5)(i).

(e) Through June 30, 2008, direct care component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(5)(a) Therapy care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, therapy care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2005, therapy care component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, through June 30, 2007, therapy care component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, therapy care component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the therapy care component rate allocation shall be cost rebased biennially, using the adjusted cost report data for the calendar year

two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Through June 30, 2008, therapy care component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(6)(a) Support services component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, support services component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2005, support services component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, through June 30, 2007, support services component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, support services component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the support services component rate allocation shall be cost rebased biennially, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Through June 30, 2008, support services component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(7)(a) Operations component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, operations component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2006, operations component rate allocations. Adjusted cost report data from 2003 will be used for July 1, 2006, through June 30, 2007, operations component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, operations component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the operations component

1 rate allocation shall be cost rebased biennially, using the adjusted
2 cost report data for the calendar year two years immediately preceding
3 the rate rebase period, so that adjusted cost report data for calendar
4 year 2007 is used for July 1, 2009, through June 30, 2011, and so
5 forth.

6 (b) Through June 30, 2008, operations component rate allocations
7 shall be adjusted annually for economic trends and conditions by a
8 factor or factors defined in the biennial appropriations act. A
9 different economic trends and conditions adjustment factor or factors
10 may be defined in the biennial appropriations act for facilities whose
11 operations component rate is set equal to their adjusted June 30, 2006,
12 rate, as provided in RCW 74.46.521(4).

13 (8) Component rate allocations in direct care, therapy care,
14 support services, and operations shall be adjusted for economic trends
15 and conditions by three and seven-tenths percent for the July 1, 2008,
16 rate setting.

17 (a) Beginning on July 1, 2009, and for subsequent odd-numbered July
18 1st rate periods, direct care, therapy care, support services, and
19 operations rate allocations shall be adjusted for economic trends and
20 conditions by the factor determined by sum of the United States
21 consumer price indicator, as is published by the Washington economic
22 and revenue forecast, from the midpoint of the cost year through
23 December 31st of the rate year; so that: For the rate period
24 commencing July 1, 2009, through June 30, 2010, the adjustment for
25 economic trends and conditions is the sum of half the United States
26 consumer price indicator for 2007, plus the United States consumer
27 price indicator for 2008, plus the projected United States consumer
28 price indicator for 2009; and so forth for subsequent odd-numbered year
29 July 1st rate periods.

30 (b) Beginning on July 1, 2010, and for subsequent even-numbered
31 July 1st rate periods, direct care, therapy care, support services, and
32 operations rate allocations shall be adjusted by a factor determined by
33 the forecasted United States consumer price indicator for the year in
34 which the rate period commences, as is published by the Washington
35 economic and revenue forecast; so that: For the rate period commencing
36 July 1, 2010, the adjustment for economic trends and conditions is the
37 forecast United States consumer price indicator for 2010; and so forth
38 for subsequent even-numbered July 1st rate periods. This adjustment

factor shall be multiplied by the direct care, therapy care, support services, and operations rate allocations existing on June 30, 2010, and the component rate allocations existing on each subsequent June 30th in even-numbered year periods.

(9) For July 1, 1998, through September 30, 1998, a facility's property and return on investment component rates shall be the facility's June 30, 1998, property and return on investment component rates, without increase. For October 1, 1998, through June 30, 1999, a facility's property and return on investment component rates shall be rebased utilizing 1997 adjusted cost report data covering at least six months of data.

((~~(9)~~)) (10) Total payment rates under the nursing facility medicaid payment system shall not exceed facility rates charged to the general public for comparable services.

((~~(10)~~)) (11) Medicaid contractors shall pay to all facility staff a minimum wage of the greater of the state minimum wage or the federal minimum wage.

((~~(11)~~)) (12) The department shall establish in rule procedures, principles, and conditions for determining component rate allocations for facilities in circumstances not directly addressed by this chapter, including but not limited to: The need to prorate inflation for partial-period cost report data, newly constructed facilities, existing facilities entering the medicaid program for the first time or after a period of absence from the program, existing facilities with expanded new bed capacity, existing medicaid facilities following a change of ownership of the nursing facility business, facilities banking beds or converting beds back into service, facilities temporarily reducing the number of set-up beds during a remodel, facilities having less than six months of either resident assessment, cost report data, or both, under the current contractor prior to rate setting, and other circumstances.

((~~(12)~~)) (13) The department shall establish in rule procedures, principles, and conditions, including necessary threshold costs, for adjusting rates to reflect capital improvements or new requirements imposed by the department or the federal government. Any such rate adjustments are subject to the provisions of RCW 74.46.421.

((~~(13)~~)) (14) Effective July 1, 2001, through June 30, 2008, medicaid rates shall continue to be revised downward in all components, in accordance with department rules, for facilities converting banked

beds to active service under chapter 70.38 RCW, by using the facility's increased licensed bed capacity to recalculate minimum occupancy for rate setting. However, for facilities other than essential community providers which bank beds under chapter 70.38 RCW, after May 25, 2001, medicaid rates shall be revised upward, in accordance with department rules, in direct care, therapy care, support services, and variable return components only, by using the facility's decreased licensed bed capacity to recalculate minimum occupancy for rate setting, but no upward revision shall be made to operations, property, or financing allowance component rates. ((~~The direct care component rate allocation shall be adjusted, without using the minimum occupancy assumption, for facilities that convert banked beds to active service, under chapter 70.38 RCW, beginning on July 1, 2006.~~

~~(14)~~)) (15) Facilities obtaining a certificate of need or a certificate of need exemption under chapter 70.38 RCW after June 30, 2001, must have a certificate of capital authorization in order for (a) the depreciation resulting from the capitalized addition to be included in calculation of the facility's property component rate allocation; and (b) the net invested funds associated with the capitalized addition to be included in calculation of the facility's financing allowance rate allocation.

Sec. 2. RCW 74.46.435 and 2001 1st sp.s. c 8 s 7 are each amended to read as follows:

(1) Effective July 1, 2001, the property component rate allocation for each facility shall be determined by dividing the sum of the reported allowable prior period actual depreciation, subject to RCW 74.46.310 through 74.46.380, adjusted for any capitalized additions or replacements approved by the department, and the retained savings from such cost center, by the greater of a facility's total resident days for the facility in the prior period or resident days as calculated on eighty-five percent facility occupancy. Effective July 1, 2002, the property component rate allocation for all facilities, except essential community providers, shall be set by using the greater of a facility's total resident days from the most recent cost report period or resident days calculated at ninety percent facility occupancy. Effective July 1, 2008, the property component rate allocation for all facilities shall be set by using the total resident days from the most recent cost

report period. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the property component rate shall be adjusted to anticipated resident day level.

(2) A nursing facility's property component rate allocation shall be rebased annually, effective July 1st, in accordance with this section and this chapter.

(3) When a certificate of need for a new facility is requested, the department, in reaching its decision, shall take into consideration per-bed land and building construction costs for the facility which shall not exceed a maximum to be established by the secretary.

(4) Effective July 1, 2001, for the purpose of calculating a nursing facility's property component rate, if a contractor has elected to bank licensed beds prior to April 1, 2001, or elects to convert banked beds to active service at any time, under chapter 70.38 RCW, the department shall use the facility's new licensed bed capacity to recalculate minimum occupancy for rate setting and revise the property component rate, as needed, effective as of the date the beds are banked or converted to active service. However, in no case shall the department use less than eighty-five percent occupancy of the facility's licensed bed capacity after banking or conversion. Effective July 1, 2002, in no case, other than essential community providers, shall the department use less than ninety percent occupancy of the facility's licensed bed capacity after conversion.

(5) The property component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

NEW SECTION. **Sec. 3.** A new section is added to chapter 74.46 RCW to read as follows:

(1) The department shall establish for each medicaid nursing facility a financing allowance component rate allocation. The financing allowance component rate shall be rebased annually, effective July 1st, in accordance with the provisions of this section and this chapter.

(2) Effective July 1, 2008, the financing allowance shall be determined by multiplying the net invested funds of each facility by

1 one-tenth, and dividing by the nursing facility's total resident days
2 from the most recent cost report period. However, assets acquired on
3 or after May 17, 1999, shall be grouped in a separate financing
4 allowance calculation that shall be multiplied by eighty-five one-
5 thousandths. The financing allowance factor of eighty-five one-
6 thousandths shall not be applied to the net invested funds pertaining
7 to new construction or major renovations receiving certificate of need
8 approval or an exemption from certificate of need requirements under
9 chapter 70.38 RCW, or to working drawings that have been submitted to
10 the department of health for construction review approval, prior to May
11 17, 1999.
12 (3) In computing the portion of net invested funds representing the
13 net book value of tangible fixed assets, the same assets, depreciation
14 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,
15 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets,
16 shall be utilized, except that the capitalized cost of land upon which
17 the facility is located and such other contiguous land which is
18 reasonable and necessary for use in the regular course of providing
19 resident care shall also be included. Subject to provisions and
20 limitations contained in this chapter, for land purchased by owners or
21 lessors before July 18, 1984, capitalized cost of land shall be the
22 buyer's capitalized cost. For all partial or whole rate periods after
23 July 17, 1984, if the land is purchased after July 17, 1984,
24 capitalized cost shall be that of the owner of record on July 17, 1984,
25 or buyer's capitalized cost, whichever is lower. In the case of leased
26 facilities where the net invested funds are unknown or the contractor
27 is unable to provide necessary information to determine net invested
28 funds, the secretary shall have the authority to determine an amount
29 for net invested funds based on an appraisal conducted according to RCW
30 74.46.360(1).
31 (4) The financing allowance rate allocation calculated in
32 accordance with this section shall be adjusted to the extent necessary
33 to comply with RCW 74.46.421.

34 **Sec. 4.** RCW 74.46.511 and 2007 c 508 s 4 are each amended to read
35 as follows:
36 (1) The therapy care component rate allocation corresponds to the
37 provision of medicaid one-on-one therapy provided by a qualified

therapist as defined in this chapter, including therapy supplies and therapy consultation, for one day for one medicaid resident of a nursing facility. The therapy care component rate allocation for October 1, 1998, through June 30, 2001, shall be based on adjusted therapy costs and days from calendar year 1996. The therapy component rate allocation for July 1, 2001, through June 30, 2007, shall be based on adjusted therapy costs and days from calendar year 1999. Effective July 1, 2007, the therapy care component rate allocation shall be based on adjusted therapy costs and days as described in RCW 74.46.431(5). The therapy care component rate shall be adjusted for economic trends and conditions as specified in RCW 74.46.431(5), and shall be determined in accordance with this section.

(2) In rebasing, as provided in RCW 74.46.431(5)(a), the department shall take from the cost reports of facilities the following reported information:

(a) Direct one-on-one therapy charges for all residents by payer including charges for supplies;

(b) The total units or modules of therapy care for all residents by type of therapy provided, for example, speech or physical. A unit or module of therapy care is considered to be fifteen minutes of one-on-one therapy provided by a qualified therapist or support personnel; and

(c) Therapy consulting expenses for all residents.

(3) The department shall determine for all residents the total cost per unit of therapy for each type of therapy by dividing the total adjusted one-on-one therapy expense for each type by the total units provided for that therapy type.

(4) The department shall divide medicaid nursing facilities in this state into two peer groups:

(a) Those facilities located within urban counties; and

(b) Those located within nonurban counties.

The department shall array the facilities in each peer group from highest to lowest based on their total cost per unit of therapy for each therapy type. The department shall determine the median total cost per unit of therapy for each therapy type and add ten percent of median total cost per unit of therapy. The cost per unit of therapy for each therapy type at a nursing facility shall be the lesser of its cost per unit of therapy for each therapy type or the median total cost per unit plus ten percent for each therapy type for its peer group.

(5) The department shall calculate each nursing facility's therapy care component rate allocation as follows:

(a) To determine the allowable total therapy cost for each therapy type, the allowable cost per unit of therapy for each type of therapy shall be multiplied by the total therapy units for each type of therapy;

(b) The medicaid allowable one-on-one therapy expense shall be calculated taking the allowable total therapy cost for each therapy type times the medicaid percent of total therapy charges for each therapy type;

(c) The medicaid allowable one-on-one therapy expense for each therapy type shall be divided by total adjusted medicaid days to arrive at the medicaid one-on-one therapy cost per patient day for each therapy type;

(d) The medicaid one-on-one therapy cost per patient day for each therapy type shall be multiplied by total adjusted patient days for all residents to calculate the total allowable one-on-one therapy expense. The lesser of the total allowable therapy consultant expense for the therapy type or a reasonable percentage of allowable therapy consultant expense for each therapy type, as established in rule by the department, shall be added to the total allowable one-on-one therapy expense to determine the allowable therapy cost for each therapy type;

(e) The allowable therapy cost for each therapy type shall be added together, the sum of which shall be the total allowable therapy expense for the nursing facility;

(f) <u>Through June 30, 2008, t</u>he total allowable therapy expense will be divided by the greater of adjusted total patient days from the cost report on which the therapy expenses were reported, or patient days at eighty-five percent occupancy of licensed beds. <u>Effective July 1, 2008, the total allowable therapy expense will be divided by adjusted total patient days from the cost report on which the therapy expenses were reported.</u> The outcome shall be the nursing facility's therapy care component rate allocation.

(6) The therapy care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

(7) The therapy care component rate shall be suspended for medicaid

residents in qualified nursing facilities designated by the department who are receiving therapy paid by the department outside the facility daily rate under RCW 74.46.508(2).

Sec. 5. RCW 74.46.521 and 2007 c 508 s 5 are each amended to read as follows:

(1) The operations component rate allocation corresponds to the general operation of a nursing facility for one resident for one day, including but not limited to management, administration, utilities, office supplies, accounting and bookkeeping, minor building maintenance, minor equipment repairs and replacements, and other supplies and services, exclusive of direct care, therapy care, support services, property, financing allowance, and variable return.

(2) Except as provided in subsection (4) of this section, beginning October 1, 1998, the department shall determine each medicaid nursing facility's operations component rate allocation using cost report data specified by RCW 74.46.431(7)(a). Effective July 1, 2002, <u>through June 30, 2008,</u> operations component rates for all facilities except essential community providers shall be based upon a minimum occupancy of ninety percent of licensed beds, and no operations component rate shall be revised in response to beds banked on or after May 25, 2001, under chapter 70.38 RCW.

(3) Except as provided in subsection (4) of this section, to determine each facility's operations component rate the department shall:

(a) <u>Through June 30, 2008, a</u>rray facilities' adjusted general operations costs per adjusted resident day, as determined by dividing each facility's total allowable operations cost by its adjusted resident days for the same report period, increased if necessary to a minimum occupancy of ninety percent; that is, the greater of actual or imputed occupancy at ninety percent of licensed beds, for each facility from facilities' cost reports from the applicable report year, for facilities located within urban counties and for those located within nonurban counties and determine the median adjusted cost for each peer group<u>. Effective July 1, 2009, array facilities' adjusted general operations costs per adjusted resident day, as determined by dividing each facility's total allowable operations cost by its adjusted</u>

resident days for the same report period, for facilities located within urban counties and for those located within nonurban counties and determine the median adjusted cost for each peer group;

(b) Set each facility's operations component rate at the lower of:

(i) The facility's per resident day adjusted operations costs from the applicable cost report period adjusted if necessary to a minimum occupancy of eighty-five percent of licensed beds before July 1, 2002, and ninety percent effective July 1, 2002, but not adjusted for minimum occupancy effective July 1, 2008; or

(ii) The adjusted median per resident day general operations cost for that facility's peer group, urban counties or nonurban counties; and

(c) Adjust each facility's operations component rate for economic trends and conditions as provided in RCW 74.46.431((~~(7)(b)~~)).

(4)((~~(a) Effective July 1, 2006, through June 30, 2007, for any facility whose direct care component rate allocation is set equal to its June 30, 2006, direct care component rate allocation, as provided in RCW 74.46.506(5), the facility's operations component rate allocation shall also be set equal to the facility's June 30, 2006, operations component rate allocation.~~

~~(b) The operations component rate allocation for facilities whose operations component rate is set equal to their June 30, 2006, operations component rate, shall be adjusted for economic trends and conditions as provided in RCW 74.46.431(7)(b).~~

~~(5)~~)) The operations component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

NEW SECTION. **Sec. 6.** RCW 74.46.437 (Financing allowance component rate allocation) and 2001 1st sp.s. c 8 s 8 & 1999 c 353 s 11 are each repealed.

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