

**Report to the Legislature
By the Joint Legislative Task Force
on
Long-Term Care Residential Facility Payment
Systems**

Chapter 522, Laws of 2007, Sec. 206 (9) (c)

January 11, 2008

Table of Contents

| | |
|--|----------|
| I. Overview | i |
| Authorization for the Task Force | i |
| Duties of the Task Force | i |
| Members of the Task Force | i |
| Activities of the Task Force | ii |
| Additional Materials | ii |
| 2008 Governor’s Proposed Supplemental Budget | |
| II. Recommendations | 1 |
| 1. Objectives | 1 |
| 2. Nursing Facility Payment System | 1 |
| 2.1 Recommendation for continuation of the Task Force | 1 |
| 2.2 Recommendations for Legislative Process and Department Actions | 1 |
| 2.2.1 Sunset the current reimbursement statute | 1 |
| 2.2.2 The Department’s proposal | 1 |
| 2.2.3 Task Force oversight | 2 |
| 2.3 Task Force Instructions to the Department | 2 |
| 2.3.1 Combine existing rate components | 2 |
| 2.3.2 Review Minimum Occupancy | 2 |
| 2.3.3 Establish Pay for Performance Outcomes | 3 |
| 2.3.4 Identify add-on programs | 3 |
| 2.3.5 Rebasing | 3 |
| 2.3.6 Identify cost reporting schedules for elimination | 3 |
| 2.4 Other Task Force Recommendations | 3 |
| 2.4.1 Eliminate variable return | 3 |
| 2.4.2 Capital | 4 |
| 3. Community Residential | 4 |
| 3.1 Task Force Recommendations to Expand Community Residential Options | 4 |
| 3.2 Community Residential Payment System Changes | 4 |
| 3.3 Task Force recommendations on Liability Insurance | 4 |
| 4. Proposed distribution of FY09 appropriation \$8.8m GF-S | 5 |
| 5. Proposed Timeline: | 6 |

Table of Appendices

| | |
|--|------------|
| Appendix A: Minority Report | A-1 |
| Appendix B: Summary of the Brown Report | B-1 |

Report to the Legislature by the Joint Legislative Task Force on Long-Term Care Residential Facility Payment Systems

I. Overview

Authorization for the Task Force

The Joint Legislative Task Force on Long-Term Care Residential Facility Payment Systems was established by the 2007 Legislature in the 2007-09 Operating Budget (Chapter 522, Laws of 2007, sec. 206 (9) (c)). The Task Force was set to expire December 31, 2007.

Duties of the Task Force

As outlined in the 2007-09 Operating Budget, the Task Force is to:

- Review the current payment methodology for nursing homes, boarding homes, and adult family homes, giving strong consideration to the task force's guiding principles.
- Review and consider recommendations submitted by an independent contractor for revisions to the current Medicaid payment methodology for nursing homes.
- Consider input from long-term care stakeholders with respect to the task force's guiding principles.
- Make recommendations for revisions to, restructuring of, or replacement of existing payment methodologies to the Legislature by December 31, 2007.
 - Any recommendations affecting payment in Fiscal Year 2009 shall be consistent with the amounts appropriated for this specific purpose by the 2007-09 Operating Budget for nursing facilities -- \$8.8 million General Fund-State, and \$9.3 million in federal funds.

Members of the Task Force

Members of the Task Force were appointed by the majority and minority caucuses of each chamber during the 2007 Legislative interim. Members include:

- Representative Dawn Morrell (D-25), chair.
- Representative Tami Green (D-28).
- Representative Eileen Cody (D-34), alternate.
- Representative Barbara Bailey (R-10).
- Senator Karen Keiser (D-33).
- Senator Steve Hobbs (D-44).
- Senator Linda Evans Parlette (R-12).

Activities of the Task Force

The Task Force met five times, beginning September 26, 2007, and ending December 18, 2007. Meeting agendas and materials are posted on the website for the Task Force (see below, "Additional Materials").

The Task Force received presentations by the Department of Social and Health Services Aging and Disability Services Administration (DSHS-ADSA), legislative staff, and the Brown University Center for Gerontology and Health Care Research. DSHS-ADSA contracted with Brown University to study simplification of Washington's nursing home payment system, as funded in the 2007-09 Operating Budget. The Task Force also took public testimony from stakeholders including the trade associations representing for-profit and non-profit nursing homes and boarding homes, adult family home providers and associations, other providers, and labor unions.

At the Task Force's final meeting on December 18th, the members reviewed various proposals on changing nursing home and community residential payment. The Task Force made preliminary recommendations, subject to subsequent review and approval by the members. After this meeting, final recommendations were approved by the majority of the members and are included in this report below. A minority opinion is offered as an alternative to these recommendations and is included in this report as an appendix.

Additional Materials

The appendix includes a legislative staff summary of the Brown University recommendations to simplify the nursing home payment system, to assist with understanding the context and source of some of the Task Force's recommendations.

Additional information, including the full text of the Brown University report and PowerPoint presentations by DSHS-ADSA and legislative staff, can be found on the Task Force's website, at: <http://leg.wa.gov/Joint/Committees/LTCRFPS/>

2008 Governor's Proposed Supplemental Budget

The Task Force acknowledges the following Long Term Care rate increases provided in Governor Gregoire's Proposed 2008 Supplemental Budget.

FY 09 New Funding

Nursing Homes:

- \$7.4 M GF-S (\$15 M Total) rate increase for low-wage worker benefits or pay increases and/or enrichment of staffing levels.
- \$1.8 M GF-S (\$3.7 M Total) to fund current nursing home expenditures over the "budget dial".
- No recommendations for the \$8.8 M GF-S; left to the Task Force.

Adult Family Homes:

- \$2.1 M GF-S (\$4.4 M Total) for an additional 2.8% vendor rate increase for "parity" with the percentage increase given to Boarding Homes in the 2008 session. (Yields a 4.8% total increase for FY09, including the current 2% already funded.)

No systemic changes proposed for nursing facilities or community residential.

II. Recommendations

1. Objectives

Provide a framework for a payment system that:

- Fosters high quality care in all long term care settings.
 - Care that allows for maximum autonomy and independence.
 - Care that allows for the least disruption as acuity levels increase.
 - Care that allows consumers to remain in their own community.
- Establishes criteria and incentives to reward performance that promotes a desirable workplace for employees and a positive environment for consumers.
- Simplifies the nursing home reimbursement system to make it more transparent and easier to understand.
- Recognizes the system holistically and provides equity and accountability among all long term care providers.

2. Nursing Facility Payment System

2.1 Recommendation for continuation of the Task Force:

The Task Force finds that many of Brown University's recommendations may simplify the current nursing home payment system; however, more in-depth analysis of fiscal impacts and impacts on client services is necessary. The taskforce recommends continued refinement on the details in the Brown recommendations. It also recognizes the need for phased implementation. The LTC taskforce will therefore continue through **December 30, 2009** in order to provide comments on recommendations as they become final.

2.2 Recommendations for Legislative Process and Department Actions:

2.2.1 Sunset the current reimbursement statute:

By the 2009-11 biennium, the Task Force recommends replacing the current detailed nursing home statute with a new statutory framework for reimbursement, similar to what the state has for hospitals, by passing legislation in the 2008 session to:

- Repeal portions of Chapter 74.46 RCW that specify the details of the current reimbursement system, effective at the end of the current biennium (**June 30, 2009**).
- Add a new section to Chapter 74.46, that sets an overall framework for reimbursement, and gives authority for the DSHS Aging and Disability Services Administration (the Department) to administer the system within the framework specified, effective **July 1, 2009** (beginning of the 2009-11 biennium).

2.2.2 The Department's proposal:

The Department shall develop a proposal for a simplified nursing facility payment system. The process for developing a proposal shall include an assessment of impacts on the budget and client services.

- The Department shall consider stakeholder input in the process of developing a proposal.

2.2.3 Task Force oversight:

The Department's proposal will become the nursing facility payment system effective July 1, 2009 unless the 2009 Legislature passes a bill directing otherwise.

- On or before **September 30, 2008**, the Department shall provide preliminary recommendations to the taskforce for review and comment. Comments from the Task Force shall be considered in the Department's final proposal.
- On or before **December 31, 2008**, the Department shall provide final recommendations to the Task Force for review.

2.3 Task Force Instructions to the Department:

These items shall be included in the Department's proposal to the Task Force.

2.3.1 Combine existing rate components:

The Department will undertake an analysis to combine existing rate components to include:

- Costs that best fit in each of the rate components
- Lids that are reasonable

Recommendations shall include:

- Direct Care (DC), Therapy Care (TC), and some Support Services (SS) become one new Direct Care component
 - Application of some case mix adjustments (Brown's suggestion of applying case mix to (TC) and (SS))
- Operations (OP) and some Support Services (SS) become one Indirect Care component

2.3.2 Review Minimum Occupancy:

It is the intent of the Task Force not to pay for empty beds. The Task Force recommends leaving the minimum occupancy in effect, but recognizes that it may need to change with the implementation of the new payment system. The Department shall review and determine if changes in the simplified structure would allow changes to minimum occupancy.

2.3.3 Establish Pay for Performance Outcomes:

The Department shall make recommendations on methods for incorporating performance based outcomes into the nursing home payment system.

- The Department shall establish criteria and accountability measures for performance based outcomes.
- Where possible, the recommended outcomes shall include benchmarks taken from the 2008 Federal CMS pilot on “value based purchasing.”
- Criteria must include measurements to improve staff retention

The Department shall be prepared to begin data collection on performance outcomes on **July 1, 2009 (FY 2010)**.

2.3.4 Identify add-on programs:

The Department shall identify programs that may be funded as a supplemental add-on to the base rate. The Task Force recommends that items that create an on-going wage increase be part of the base rate, not a supplemental add-on. Recommendations are not limited to, but may include:

- Pay for performance programs
- Programs for behavior supports

2.3.5 Rebasing:

The Department shall include recommendations on the continuation of rebasing in their proposal for a simplified nursing facility payment system.

2.3.6 Identify cost reporting schedules for elimination:

Upon completion of its preliminary recommendations, the Department will review the current annual cost reporting with stakeholders. Where possible, schedules that are no longer necessary should be identified for potential elimination. Recommendations for revisions to cost reporting must be cost neutral.

2.4 Other Task Force Recommendations

2.4.1 Eliminate variable return:

The Task Force recommends eliminating the variable return rate component in the **2008 Legislative session**. This will go into effect **July 1, 2009**. Funding will be reallocated to support supplemental programs that are not added to the base rate and/or other discretionary items such as behavior supports.

2.4.2 Capital:

- The Task Force recommends passing legislation during the **2008 legislative session**, to revise capital authorization (RCW 74.46.803) from a first come, first serve system to one that funds capital on a need-based priority. SB 5905 (currently in Senate Rules) will be reviewed and amended if necessary.
- The Department shall review the costs and benefits of moving to a fair rental system and report their findings to the Task Force by **July 1, 2009** (FY 2010). The report shall include a plan of implementation for FY11 forward.
 - ◆ The Task Force proposes funding for this purpose.

3. Community Residential

3.1 Task Force Recommendations to Expand Community Residential Options

The taskforce recognizes the decline in available community residential options for Medicaid clients.

- The taskforce finds a need to expand and protect community residential options for Medicaid clients. Further investigation on financial safeguards for clients is recommended. Options will be reviewed via the legislative process and may include provider/client contractual requirements.
- The Department shall research and report on alternatives to boarding homes/assisted living facilities. The report shall be submitted to the taskforce on or before **July 15, 2009**. Research shall include options for aging in place, cluster care programs, partnerships between HUD and Medicaid, and other methods to bring home care services more efficiently to apartments where seniors live.
 - ◆ The Task Force proposes funding for this purpose.

3.2 Community Residential Payment System Changes:

The Task Force finds that the current reimbursement system does not fully reflect all the acuity categories under the CARE assessment tool. The Task Force recommends expanding reimbursement to 17 CARE levels.

- ◆ The Task Force proposes funding for this purpose.

3.3 Task Force recommendations on Liability Insurance

The Task Force recognizes financial hardship incurred by Adult Family Homes due to increases in liability insurance that may not align with the size of operation. The Task Force recommends seed funding to alleviate this issue.

- ◆ The Task Force proposes funding for this purpose.

4. Proposed distribution of FY09 appropriation \$8.8m GF-S

The Task Force recommends funding be appropriated for the following purposes:

- Nursing Homes
 - Direct care vendor rate increases (may include vendor rate increases for support services as well)

- Community
 - Update the cost base to 2005 data and adopt 12 or 17 Care Level payments.
 - Alleviate liability insurance burden

- Department
 - Fund studies recommended by the Task Force

5. Proposed Timeline:

| | |
|-----------------------------|--|
| January – March 2008 | 2008 Legislative Session |
| September 30, 2008 | Department provides preliminary recommendations on a revised payment system to the Task Force |
| October 2008 | Taskforce meets to discuss and provide comments for revisions to the preliminary recommendations |
| December 1, 2008 | Department provides final recommendations on revised payment system to the Task Force |
| December 15, 2008 | Task Force meets to provide comments to the Department on final recommendations |
| January 1, 2009 | Task Force provides recommendations on the revised payment system to the Legislature. |
| January – April 2009 | 2009 Legislative session |
| June 30, 2009 | Sunset on portions of RCW 74.46 that specify details of the current reimbursement system. |
| July 1, 2009 | <ul style="list-style-type: none">▪ Implementation of the revised payment system begins▪ Performance based data collection begins▪ Variable return is eliminated▪ Department proposal on fair rental system due to the Task Force |
| July 15, 2009 | Department study on alternatives to boarding homes/assisted living due to the Task Force |
| September 15, 2009 | Task Force meets to discuss proposal on fair rental system and alternatives to boarding homes/assisted living facilities. |
| December 15, 2009 | Task Force conducts an advisory vote on recommendations for implementing the fair rental system and discusses final recommendations on alternatives to boarding homes/assisted living facilities. |
| January – March 2010 | 2010 Legislative Session |

APPENDIX A

Joint Legislative Task Force on Long-Term Care Residential Facility Payment Systems:

Minority Report

by Senator Linda Evans Parlette and Representative Barbara Bailey

While we appreciate the objectives listed in the Task Force's Final Report, we do not agree with its most significant recommendations, and respectfully submit this minority report. We feel strongly that since the Task Force began late in the 2007 interim (end of September), additional time is needed for analysis, stakeholder input, and discussion prior to making big decisions with impacts on our citizens and businesses. We believe our citizens, long-term care facility residents, and care providers would likely all benefit from a more thorough examination of these issues during the 2008 interim.

Nursing Facility Payment System

Objections and Alternatives:

In contrast to the majority's Final Report, we believe that:

- I. The *entire* \$8.8 Million General Fund-State appropriated in the last operating budget should be used to increase nursing home rates for Fiscal Year 2009, as the 2007 Legislature intended. (We do not support Report Recommendation 4, which suggests that an unspecified amount of these funds be used for studies, adult family home liability insurance, and community residential rates.) The nursing home stakeholders should be brought together during the 2008 session to work out the details of a rate increase.

Rationale: Although we did not vote for the 2007 operating budget, the budget was enacted by the Legislature and signed into law by the Governor. We believe that we should honor the integrity of that process and whatever commitments were made at the time to nursing homes. Without this funding, nursing homes would receive a lower percentage rate increase than any other long-term care provider, without justification.

- II. The nursing home reimbursement statute should not be repealed at this time, nor should the variable return component be eliminated. (We do not support Report Recommendations 2.2.1 and 2.4.1.) Instead, the Department of Social and Health Services (DSHS) should work with stakeholders on alternatives to the current system, and report back to the Task Force by December, 2008 with completed modeling of the total fiscal impacts and impacts on individual businesses before this discussion continues. Issues to be reviewed could include items such as combining rate components, changing minimum occupancy, replacing variable return, creating new add-on rates, implementing some type of pay for performance, regular automatic rebasing and its frequency, and investigating moving to a fair rental capital system— Report Recommendations 2.3.1, 2.3.2, 2.3.3, 2.3.4, 2.3.5, and 2.4.2. The discussion of

regular automatic rebasing should include its relationship with “hold harmless” provisions.

Rationale: Our main concern is to “first, do no harm.” The nursing home reimbursement system is complicated and could benefit from simplification, but not without first examining the consequences. Nursing homes are businesses that need sufficient time to plan around changes in payment so that they can successfully operate and care for their residents. Sunsetting the statute by June 30, 2009 without a specific plan in place does not allow enough time for them to do so. In addition, DSHS needs sufficient time to gather stakeholder input and model proposals so that any unintended consequences can be caught in advance. A logical alternative to the majority’s recommendation 2.2.1 is for DSHS to proceed with crafting and modeling alternative proposals (with stakeholder input), and to present these to the Task Force by December, 2008. At that point, the Task Force can decide how to proceed, with full information in hand, but with the “safety net” of the current statute still in place.

Agreement:

- III. We agree that the capital authorization system should be improved by passing legislation during the 2008 session to move from a first-come, first-served system to a prioritized system (SB 5905). This is a concrete idea for the 2008 Legislative session that all of the Task Force’s stakeholders agree upon.

Community Residential System

Concerns:

- IV. Overall, this is another area where additional time for analysis and discussion is needed prior to decision-making. The scope of the Task Force included community residential, but most of our meeting time was spent discussing nursing homes.
- V. While we believe that a reimbursement system that more accurately pays Adult Family Homes based on client acuity is a good concept, we are unclear about what impact this change would have on payment rates for Boarding Homes/Assisted Living and their residents. Again, our main concerns are to do no harm and to acknowledge the business realities of the facilities that care for the elderly and disabled. This item needs further consideration before action is taken. (We do not support Report Recommendation 3.2.)

APPENDIX B

Staff Summary of the Brown University Report to Simplify Nursing Facility Medicaid Payment Rates 11/14/2007

Specific Recommendations:

1. **Rate components: reduce from seven to three components.** Have one “capital” cost center. Operating costs are divided into “direct care” and “indirect”. (See detail on the table on the next page.)
2. **Minimum occupancy adjustment: eliminate for all *operating* costs.**
3. **Case mix adjustments: continue them, but apply to more costs** besides direct care, such as therapy care and some of support services.
4. **Capital: Use “fair rental” as the cost basis** instead of historical data and **eliminate the Certificate of Capital Authorization (CCA) process.**
5. **Rebasing: do every three years, with some uncertainty as to when** this would occur. Keep the prospective facility-based system. (Note: the 2007 Legislature already put *biennial* rebasing into law.)
6. **Add-ons & “pay for performance”:** do *separately from the base rate*, to accomplish desired policy objectives such as increasing wages or improving quality. Sunset or make them annual to keep the base rate simpler and to provide accountability.
7. **Increase auditing of the Minimum Data Set (MDS) assessments** to insure accuracy in calculating costs.
8. **Graduated implementation** of above.

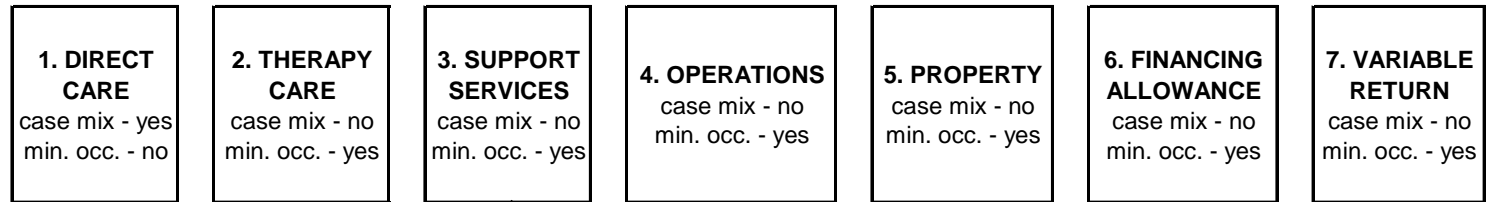
The Recommendations Do *Not* Address:

- Whether the reimbursement system should continue to be in statute.
- Whether to continue to do a settlement process.
- The exact composition of cost centers or rate components, i.e. which current “support services” costs should become “direct care” vs. “indirect.”
- The level of “lids” or “caps” for each cost center (i.e. 90% of median, etc.). Instead, the lids can be set by the Legislature to create certain incentives or to adjust the price tag of the proposal.

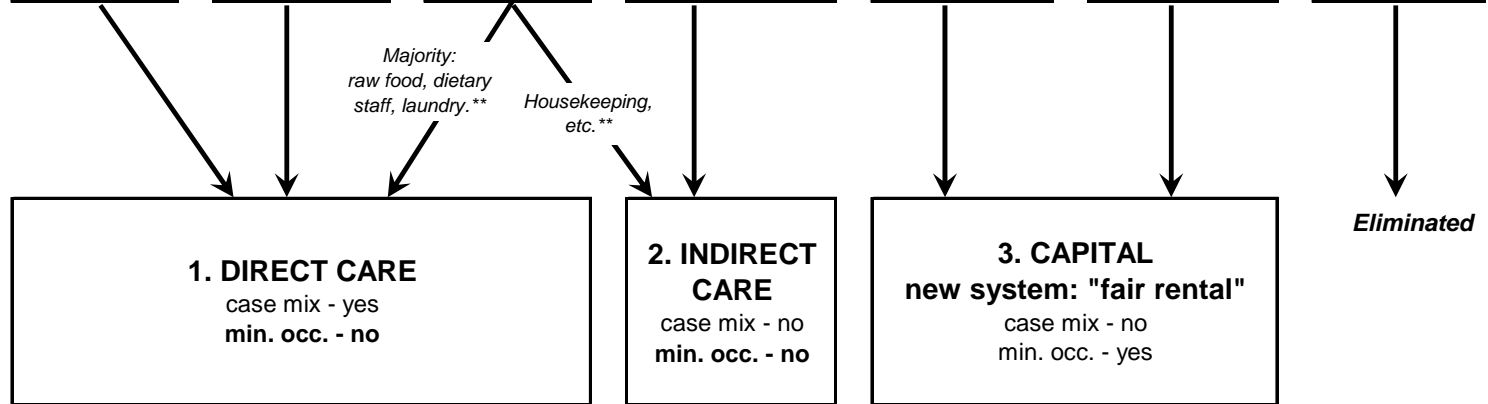
Nursing Facility Medicaid Rate Components

Current Law vs. Brown University Recommendations

Current Law:



Proposal:



+ Supplemental Add-on Rates for Pay-for-Performance, Wages, etc.

***The proposal makes suggestions, but does not specify exactly which support services costs go to indirect care.*