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**HOUSE BILL 2397**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Representative Stonier

1 AN ACT Relating to assisted living facilities that are owned or  
2 operated by affordable housing providers; amending RCW 18.20.020 and  
3 74.39A.032; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that older  
6 adults in need of long-term services and supports are impacted by the  
7 housing affordability and homelessness crisis. Particularly, but not  
8 exclusively, adults over the age of 65 with fixed, lower incomes and  
9 behavioral health and other underlying medical issues are at greatest  
10 risk for serious health consequences if housing situations become  
11 unstable. Recognizing the interplay between health and housing, the  
12 legislature intends to confirm that assisted living facilities may  
13 comply with the residential landlord tenant law, in addition to their  
14 mandatory compliance with the assisted living statute. This allows  
15 providers to leverage low-income housing tax credits and rental  
16 subsidies and increase access to assisted living.

17 **Sec. 2.** RCW 18.20.020 and 2020 c 312 s 726 are each amended to  
18 read as follows:

19 The definitions in this section apply throughout this chapter  
20 unless the context clearly requires otherwise.

1 (1) "Adult day services" means care and services provided to a  
2 nonresident individual by the assisted living facility on the  
3 assisted living facility premises, for a period of time not to exceed  
4 ten continuous hours, and does not involve an overnight stay.

5 (2) "Assisted living facility" means any home or other  
6 institution, however named, which is advertised, announced, or  
7 maintained for the express or implied purpose of providing housing,  
8 basic services, and assuming general responsibility for the safety  
9 and well-being of the residents, and may also provide domiciliary  
10 care, consistent with chapter 142, Laws of 2004, to seven or more  
11 residents after July 1, 2000. However, an assisted living facility  
12 that is licensed for three to six residents prior to or on July 1,  
13 2000, may maintain its assisted living facility license as long as it  
14 is continually licensed as an assisted living facility. "Assisted  
15 living facility" shall not include facilities certified as group  
16 training homes pursuant to RCW 71A.22.040, nor any home, institution  
17 or section thereof which is otherwise licensed and regulated under  
18 the provisions of state law providing specifically for the licensing  
19 and regulation of such home, institution or section thereof. Nor  
20 shall it include any independent senior housing, independent living  
21 units in continuing care retirement communities, or other similar  
22 living situations (~~including those subsidized by the department of~~  
23 ~~housing and urban development~~)).

24 (3) "Basic services" means housekeeping services, meals,  
25 nutritious snacks, laundry, and activities.

26 (4) "Department" means the state department of social and health  
27 services.

28 (5) "Domiciliary care" means: Assistance with activities of daily  
29 living provided by the assisted living facility either directly or  
30 indirectly; or health support services, if provided directly or  
31 indirectly by the assisted living facility; or intermittent nursing  
32 services, if provided directly or indirectly by the assisted living  
33 facility.

34 (6) "General responsibility for the safety and well-being of the  
35 resident" means the provision of the following: Prescribed general  
36 low sodium diets; prescribed general diabetic diets; prescribed  
37 mechanical soft foods; emergency assistance; monitoring of the  
38 resident; arranging health care appointments with outside health care  
39 providers and reminding residents of such appointments as necessary;  
40 coordinating health care services with outside health care providers

1 consistent with RCW 18.20.380; assisting the resident to obtain and  
2 maintain glasses, hearing aids, dentures, canes, crutches, walkers,  
3 wheelchairs, and assistive communication devices; observation of the  
4 resident for changes in overall functioning; blood pressure checks as  
5 scheduled; responding appropriately when there are observable or  
6 reported changes in the resident's physical, mental, or emotional  
7 functioning; or medication assistance as permitted under RCW  
8 69.41.085 and as defined in RCW 69.41.010.

9 (7) "Legal representative" means a person or persons identified  
10 in RCW 7.70.065 who may act on behalf of the resident pursuant to the  
11 scope of their legal authority. The legal representative shall not be  
12 affiliated with the licensee, assisted living facility, or management  
13 company, unless the affiliated person is a family member of the  
14 resident.

15 (8) "Nonresident individual" means a person who resides in  
16 independent senior housing, independent living units in continuing  
17 care retirement communities, or in other similar living environments  
18 or in an unlicensed room located within an assisted living facility.  
19 Nothing in this chapter prohibits nonresidents from receiving one or  
20 more of the services listed in RCW 18.20.030(5) or requires licensure  
21 as an assisted living facility when one or more of the services  
22 listed in RCW 18.20.030(5) are provided to nonresidents. A  
23 nonresident individual may not receive domiciliary care, as defined  
24 in this chapter, directly or indirectly by the assisted living  
25 facility and may not receive the items and services listed in  
26 subsection (6) of this section, except during the time the person is  
27 receiving adult day services as defined in this section.

28 (9) "Person" means any individual, firm, partnership,  
29 corporation, company, association, or joint stock association, and  
30 the legal successor thereof.

31 (10) "Resident" means an individual who is not related by blood  
32 or marriage to the operator of the assisted living facility, and by  
33 reason of age or disability, chooses to reside in the assisted living  
34 facility and receives basic services and one or more of the services  
35 listed under general responsibility for the safety and well-being of  
36 the resident and may receive domiciliary care or respite care  
37 provided directly or indirectly by the assisted living facility and  
38 shall be permitted to receive hospice care through an outside service  
39 provider when arranged by the resident or the resident's legal  
40 representative under RCW 18.20.380.

1 (11) "Resident applicant" means an individual who is seeking  
2 admission to a licensed assisted living facility and who has  
3 completed and signed an application for admission, or such  
4 application for admission has been completed and signed in their  
5 behalf by their legal representative if any, and if not, then the  
6 designated representative if any.

7 (12) "Resident's representative" means a person designated  
8 voluntarily by a competent resident, in writing, to act in the  
9 resident's behalf concerning the care and services provided by the  
10 assisted living facility and to receive information from the assisted  
11 living facility, if there is no legal representative. The resident's  
12 competence shall be determined using the criteria in chapter 11.130  
13 RCW. The resident's representative may not be affiliated with the  
14 licensee, assisted living facility, or management company, unless the  
15 affiliated person is a family member of the resident. The resident's  
16 representative shall not have authority to act on behalf of the  
17 resident once the resident is no longer competent.

18 (13) "Secretary" means the secretary of social and health  
19 services.

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

22 (1) The department shall establish in rule a new medicaid payment  
23 system for contracted assisted living, adult residential care, and  
24 enhanced adult residential care. Beginning July 1, 2019, payments for  
25 these contracts must be based on the new methodology which must be  
26 phased-in to full implementation according to funding made available  
27 by the legislature for this purpose. The new payment system must have  
28 these components: Client care, operations, and room and board.

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

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

1 (b) The wage variable shall include recognition of staff  
2 positions needed to perform the functions required by contract,  
3 including nursing services. Data used to establish the wage variable  
4 must be adjusted so that no baseline wage is below the state minimum  
5 in effect at the time of implementation. The wage variable is a  
6 blended wage based on the federal bureau of labor statistics wage  
7 data and the distribution of time according to staff position.  
8 Blended wages are established for each county and then counties are  
9 arrayed from highest to lowest. Service areas are established and the  
10 median blended wage in each service area becomes the wage variable  
11 for all the assigned counties in that service area. The system must  
12 have no less than two service areas, one of which shall be a high  
13 labor cost service area and shall include counties at or above the  
14 ninety-fifth percentile in the array of blended wages.

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

19 (3) The operations component must recognize costs that are  
20 allowable under federal medicaid rules for the federal matching  
21 percentage. The operations component is calculated at ninety percent  
22 or greater of the statewide median nursing facility costs associated  
23 with the following:

24 (a) Supplies;

25 (b) Nonlabor administrative expenses;

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

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

29 (4) The room and board component recognizes costs that do not  
30 qualify for federal financial participation under medicaid rules by  
31 compensating providers for the medicaid client's share of raw food  
32 and shelter costs including expenses related to the physical plant  
33 such as property taxes, property and liability insurance, debt  
34 service, and major capital repairs. The room and board component is  
35 subject to the department's and the Washington state health care  
36 authority's rules related to client financial responsibility. If the  
37 assisted living facility receives rental subsidy that limits the  
38 client's financial responsibility, shelter costs must be excluded  
39 from the medicaid payment system for contracted assisted living.

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

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

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

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