

REPORT TO THE LEGISLATURE

**Feasibility Review of Use of Housing Choice Vouchers in Medicaid Funded
Assisted Living Facilities**

ESSB 5950.SL Section 204 Proviso 57 (b)
December 1, 2024

Aging and Long-Term Support Administration
Home and Community Services/Office of Housing and Employment

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Executive Summary

In the 2024 legislative session, HB2397 [, concerning assisted living facilities that are owned or operated by affordable housing providers](#), was introduced with the goal of permitting Assisted Living Facilities (ALF)¹ to leverage low-income housing tax credits and rental subsidies, thereby increasing access to assisted living. Current language in RCW 18.20.020(2) included a clause that facilities subsidized by the department of housing and urban development were not to be considered an Assisted Living Facility and were instead to be treated like other independent senior housing, independent living units in continuing care retirement communities or other similar living situations. The bill aimed to remove the clause and allow ALFs that were owned or operated by Public Housing Authorities to be contracted Medicaid assisted living providers and also be eligible for HUD housing subsidies. In practice, certain Public Housing Authorities were subsidizing units for Medicaid clients via Housing and Urban Development (HUD) regulation and guidance.

Bill analysis by the Department of Social and Health Services Aging and Long-Term Support Administration (AL TSA) concluded that this practice will conflict with Centers for Medicare and Medicaid Services (CMS) regulations currently relied upon by AL TSA. Legislation was withdrawn, and instead the 2024 Washington State Legislature created a budget proviso mandating that AL TSA convene a workgroup and produce a report to the Legislature discussing the history and intent of the HUD regulation and the potential conflicts it creates for current CMS and Washington State law and practice.

Specifically, the proviso directs the department to identify any barriers within the state and federal systems that would prevent the use of HUD funding/project-based rental vouchers for Medicaid residents, including, but not limited to, licensing requirements and duplication of services in a manner that aligns with federal requirements and does not negatively impact receipt of federal Medicaid funding.

Due to the complexity of the history and implementation of current regulation, this preliminary report outlines the status of the work to date and does not make any policy recommendations. Instead, we seek to describe the layers of issues discovered to help inform further conversation by the legislature and the workgroup.² The legislature required a final report be submitted in fall 2025.

In 2024 DSHS convened a workgroup consisting of representatives from the Aging and Long-Term Support Administration (AL TSA), Department of Commerce, Health Care Authority, Leading Age WA, and Vancouver Housing Authority. DSHS also engaged the Seattle Housing Authority and Tacoma Housing Authority. Additionally, DSHS sought out technical assistance from HUD and CMS:

¹ For information on definitions used throughout this report, please see Addenda A.

² For a more detailed background information, please see Addenda B.

- Representatives from the state agencies met with HUD: four times between February 2024 and July 2024.
- Representatives from state agencies and the executive director of the Vancouver Housing Authority met with CMS on August 13, 2024.
- HUD, CMS, DSHS, HCA, and Commerce met on September 4, 2024.

The workgroup developed some key questions to consider as it did its research:

- Does the HUD voucher duplicate services when more than the contracted rate is received?
- Should the use of a HUD voucher be financially benefiting the client or the ALF Provider?
- For clients with no income, is the state duplicating payment for room and board that could be covered by the HUD voucher?

[Overview of Federal HUD Rules](#)

In 1999, Congress passed [HR 202, Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act](#). This act, among other things, authorized and provided funding for public housing authorities (PHA) to convert public housing to assisted living facilities (Section 310) and authorized using rental assistance in assisted living facilities (Sec 311). Section 311 amended 42 USC 1437f(o)(18) to add a [section](#) on how to use these rental assistance vouchers in assisted living and how to calculate rent.

In 2000, HUD published notice [PIH Notice 2000-41](#), which states: **“The use of housing choice vouchers in an assisted living facility will supplement the Medicaid Home and Community Based Waiver Program under Section 1915(c) of the Social Security Act to pay for residential care.”** This notice expired 9/30/2001.

In 2012, HUD published notice [PIH Notice 2012-40](#), which allows a PHA to request a waiver from HUD to “require a family to pay more than 40 percent of its monthly adjusted income for a unit in an assisted living facility if the amount or percentage is reasonable given the services and amenities provided by the assisted living facility and as the Secretary [of HUD] deems appropriate.”

[Overview of Federal CMS Rules](#)

While Centers for Medicare and Medicaid Services (CMS) has not issued guidance on the ability to utilize a HUD voucher to supplement the Medicaid Home and Community Based Waiver Program, the following are relevant CMS federal citations that pertain to this issue:

Medicaid Administrative Claiming | Federal Citation SSA 1915(c)(1) [42 U.S.C. 1396n]

[R43328 \(congress.gov\)](#)

“Federal Medicaid reimbursement is provided to states only for the services provided in home and community-based settings (e.g., home health, personal care assistance, and homemaker or chore services). The Medicaid program does not provide federal reimbursement for the cost of housing, such as a monthly rent or mortgage payment. Specifically, federal Medicaid law prohibits federal reimbursement for the costs of room and board in community-based residential care settings. State Medicaid programs may choose to offer other types of housing-related services and supports as a covered benefit and receive a federal match for doing so, including services to assist individuals with finding stable housing, transitioning from institutional to community living, and home adaptations or modifications to ensure housing is accessible to individuals with disabilities.”

Additionally added “If the assisted living facility receives rental subsidy that limits the client’s financial responsibility, shelter costs must be excluded from the Medicaid payment system for contracted assisted living.”

[42 CFR 435.726](#). Post-eligibility treatment of income of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care³.

Overview of Washington State Assisted Living Facility Payment Methodology

Assisted Living Facility Rate Summary

The Office of Rates Management with DSHS AL TSA is responsible for modeling and setting Medicaid reimbursement rates for Assisted Living Facilities (ALFs). The Washington State Legislature outlines requirements for ALF rates in [RCW 74.39A.032](#). ALF Medicaid payment rates are client-specific rates based on the estimated cost of client care, operational costs, and room & board. Current ALF rates can be viewed [here](#).

When a Medicaid client resides in an Assisted Living facility, they must contribute towards the cost of their room and board, and the cost of their care out of their available income. Not all clients have an income level that requires contribution toward the cost of care; however, all clients must contribute toward the cost of room and board (rent) and Medicaid funds cannot be used for this cost. The department calculates the total monthly client payment based on their gross income and the combined amount of room and board and cost of care is called Total Financial Responsibility. The ALF receives the total financial responsibility from the client, plus the state contracted payment, up to the state rate that was agreed to in the state contract.

³ See Addenda C for a more detailed explanation of the Medicaid calculation of cost of care.

Client Care

The client care component of the ALF Medicaid reimbursement rate is the labor component and includes variables to recognize the time and intensity of client care, staff wages and fringe benefits.

The client care component is client-specific and subject to percent funding by the Washington State Legislature. Current funding amounts can be found in the most recent budget bill: <https://fiscal.wa.gov/statebudgets/2024proposals/Documents/co/5950-S.SL.pdf>. Section 204(22)(a) calls out funding the labor component at 82%.

Operations

The operations component recognizes costs that are allowable under federal Medicaid rules for federal match. Because ALFs are not required to submit cost report data, ALF operations costs are based on reported operations costs from Skilled Nursing Facility cost reports. The ALF operations component is set at 90% of the statewide median SNF operations costs. The operations component is applied consistently for all clients and is subject to percent funding by the Washington State Legislature.

Room & Board

The room and board (R&B) component recognizes costs that do not qualify for federal financial participation under Medicaid rules. Because the R&B component does not receive federal match, R&B is paid primarily through client share of food and shelter costs. Any R&B costs the client is unable to provide needs to be covered by state only dollars. The R&B component is based on the Federal Benefit Rate, which is related to supplemental security incomes (SSI), categorically needy income level (CNIL), and countable resource standards. The R&B component is not subject to percent funding by the Washington State Legislature and is reimbursed at 100%. Any portion of the R&B rate not covered by the client out of their available income is paid out of state-only funds. [See R&B schedule here](#). An example of this might be if the client had no income, or if the client's income was less than the SSI Federal Benefit Rate.

Published Assisted Living Facility Rates

The ALF rate methodology calculates the total estimated cost of providing ALF services. However, the final published rates are based on appropriation from the Washington state legislature. ALFSA has not historically received an appropriation that funds 100% of the total estimated cost, so published rates represent the funded portion or percentage of the rate methodology. The funding percentage applies to the client care and operations components. Room & board is subject to rules related to client financial responsibility, and as such, is reimbursed to the ALFs at 100% as it is predominately client funded.

Findings to Date

As a part of the exploration thus far, the workgroup has identified areas of concern related to this current practice. Concerns include:

- The client receives no benefit from the HUD voucher as the room and board amount the client is required to pay as calculated in the Medicaid post-eligibility calculation is not reduced by the HUD voucher. The ALF receives the HUD voucher plus the full room and board payment from the client (or state, if the client does not have income)⁴.
 - Typically HUD vouchers are intended to benefit the recipient (the tenant/client) by allowing the recipient to only pay 30 percent of their income toward rent, with the voucher covering the remainder of the rent. PHAs utilizing vouchers within ALFs quote HUD [PIH Notice 2000-41](#), stating that HUD intended the use of these vouchers to supplement the Medicaid Home and Community Based Waiver Program for ALFs. As previously noted, [PIH Notice 2000-41](#) expired September 30, 2001.
 - Medicaid does not allow clients to be treated differently or have different payment structures. Currently, PHAs utilizing HUD funding in ALFs, fund all the Medicaid beds with HUD payments. The workgroup still needs to explore with CMS and HUD the possibility of individual Medicaid recipients utilizing a HUD voucher within an ALF that other Medicaid recipients may not have access to.
- Understanding the ways different funding streams are being joined together to fund the ALFs and the rules that govern those situations by different Federal agencies.
- While HUD issued guidance on utilizing vouchers in Assisted Living Facilities, there does not appear to be guidance from HUD on Move to Work PHAs leveraging HUD funding in ALFs without Project Based Vouchers. HUD also did not coordinate with CMS on this guidance. To date, CMS has not issued guidance on whether they agree with HUD's guidance, the practice of utilizing HUD funding in Medicaid ALFs, and what, if anything, would need to change in the Medicaid rate to ensure compliance with federal rules.
- PHAs and ALFs in the workgroup have expressed their need to leverage HUD funding to support the financial viability of the ALF and believe it is appropriate for the ALF to receive the housing subsidy payment in addition to the Medicaid payment and client payment.
- Absent additional CMS guidance the state is not confident that the way vouchers and Medicaid fund sources are being utilized by PHAs and ALFs is compliant with Medicaid requirements.

⁴ See Addenda D for copies of VHA calculation spreadsheets and DSHS notices to clients regarding cost of care requirements.

Next Steps

It is the intent of the legislature that this work group will continue its work through September 30, 2025, in order to facilitate completion of a final report to the governor and the appropriate committees of the legislature at that time.

The state will continue to seek out guidance from HHS/CMS and HUD and work with the convened workgroup to produce clear guidance and a final report. DSHS has submitted detailed scenarios to CMS to help drive clear guidance on the interplay between housing subsidies and Medicaid methodologies for Medicaid clients living in department contracted Assisted Living Facilities.⁵

⁵ See Addenda E for copy of information submitted to CMS.

Addendums

Addenda A - Definitions:

Provides definitions for terms used throughout this preliminary report.

Addenda B – Background Information:

Includes history of events that led to Proviso 57 and detailed information related to the workgroup's work since July 2024. This work includes Technical Assistance from HUD and CMS.

Addenda C – Cost of Care Calculation:

Description of how the state calculates the tenant portion of room and board and participation.

Addenda D – Client Notice Examples:

Provides more detail on how Vancouver Housing Authority has been calculating the tenant rent amount and the HUD voucher amount, utilizing the client responsibility letter from DSHS and the VHA calculation templates, for two of their Assisted Living Facilities, Arbor Ridge and Tenny Creek.

Addenda E - Payment Examples:

Provides 3 examples with a series of different options.