
SENATE BILL 6751

State of Washington

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By Senators Franklin, Parlette, Keiser, Delvin, Marr, Kline, King, Kohl-
Welles, Schoesler, Honeyford, and Shin

Read first time 01/25/10. Referred to Committee on Health & Long-Term
Care.

1 AN ACT Relating to establishing the medicaid nursing facility
2 quality assurance trust fund; reenacting and amending RCW 43.84.092;
3 adding new sections to chapter 74.46 RCW; creating a new section;
4 prescribing penalties; providing an expiration date; and declaring an
5 emergency.

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

7 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
8 encourage maximization of financial resources eligible and available
9 for medicaid services by establishing the medicaid nursing facility
10 quality assurance trust fund to receive nursing facility quality
11 assurance fees to use in securing federal matching funds under
12 federally prescribed programs available through the state medicaid
13 plan.

14 NEW SECTION. **Sec. 2.** For the purposes of this title, unless
15 otherwise required by the context:

16 (1) "Certain high volume medicaid nursing facilities" means the
17 fewest number of facilities necessary with the highest number of

1 medicaid days or total patient days annually to meet the statistical
2 redistribution test at 42 C.F.R. Sec. 433.68(e)(2).

3 (2) "Continuing care retirement community" means a facility that
4 provides a continuum of services by one operational entity or related
5 organization providing independent living services, or boarding home or
6 assisted living services under chapter 18.20 RCW, and skilled nursing
7 services under chapter 18.51 RCW in a single contiguous campus. The
8 number of licensed nursing home beds must be fifty-five percent or less
9 of the total number of beds available in the entire continuing care
10 retirement community. For purposes of this definition contiguous means
11 land adjoining or touching other property held by the same or related
12 organization. Land divided by a public road shall be considered
13 contiguous.

14 (3) "Deductions from revenue" means reductions from gross revenue
15 resulting from an inability to collect payment of charges. Such
16 reductions include bad debt, contractual adjustments, policy discounts
17 and adjustments, and other such revenue deductions.

18 (4) "Department" means the department of social and health
19 services.

20 (5) "Fund" means the medicaid nursing facility quality assurance
21 trust fund.

22 (6) "Hospital based" means a nursing facility that is part of, or
23 a related organization of, a hospital.

24 (7) "Medicare patient day" means a patient day for medicare
25 beneficiaries on a medicare part A stay, medicare hospice stay, and a
26 patient day for persons who have opted for managed care coverage using
27 their medicare benefit.

28 (8) "Net patient service revenue" means gross revenue from services
29 to nursing facility patients less deductions from revenue. Net patient
30 service revenue does not include other operating revenue or
31 nonoperating revenue.

32 (9) "Nonexempt nursing facility" means a nursing facility that is
33 not exempt from the quality assurance fee under section 4 of this act.

34 (10) "Nonoperating revenue" means income from activities not
35 relating directly to the day-to-day operations of an organization.
36 Nonoperating revenue includes such items as gains on disposal of a
37 facility's assets, dividends, and interest from security investments,
38 gifts, grants, and endowments.

1 (11) "Nursing facility" has the same meaning as "nursing home," as
2 defined in RCW 18.51.010.

3 (12) "Other operating revenue" means income from nonresident care
4 services to residents, as well as sales and activities to persons other
5 than residents. It is derived in the course of operating the facility
6 such as providing personal laundry service for residents or from other
7 sources such as meals provided to persons other than residents,
8 personal telephones, gift shops, and vending machines.

9 (13) "Related organization" has the same meaning as provided in RCW
10 74.46.020.

11 (14) "Resident day" means a calendar day of care provided to a
12 nursing facility resident, excluding medicare patient days. Resident
13 days include the day of admission and exclude the day of discharge. An
14 admission and discharge on the same day count as one day of care.
15 Resident days include nursing facility hospice days and exclude
16 nonmedicaid bedhold days.

17 NEW SECTION. **Sec. 3.** (1) There is hereby created in the state
18 treasury the medicaid nursing facility quality assurance trust fund.

19 (2) The medicaid nursing facility quality assurance trust fund must
20 be a separate and continuing fund, and no money in the fund reverts to
21 the state general fund at any time. The interest and income on the
22 money in the fund, after deducting any applicable charges, must be
23 credited to the fund.

24 (3) Any money received under section 4 of this act must be
25 deposited in the state treasury for credit to the medicaid nursing
26 facility quality assurance trust fund, and must be expended, to the
27 extent authorized by federal law, to obtain federal financial
28 participation in the medicaid program to maintain and enhance nursing
29 facility rates in a manner set forth in subsection (4) of this section.

30 (4) Expenditures from the medicaid nursing facility quality
31 assurance trust fund must be used only:

32 (a) As an immediate pass-through or rate add-on to reimburse the
33 medicaid share of the quality assurance assessment as a medicaid
34 allowable cost; and

35 (b) For maintenance and enhancement of the medicaid nursing home
36 rates paid on the date this act takes effect, and for subsequent
37 enhancement of medicaid nursing home rate-settings; and

1 (c) To administer the provisions of this act the department may
2 expend an amount not to exceed one-half of one percent of the money
3 received from the fees assessed, and must not exceed the amount
4 authorized for expenditure by the legislature for administrative
5 expenses in a fiscal year.

6 (5) Funds from the medicaid nursing facility quality assurance
7 trust fund may not be used to replace existing state expenditures to
8 nursing facilities on rates paid on the date this act takes effect or
9 for subsequent rate settings.

10 (6) Expenditures from the medicaid nursing facility quality
11 assurance trust fund may not be included in the calculation of the
12 annual statewide weighted average nursing facility payment rate for
13 purposes of implementing the provisions of RCW 74.46.421(4).

14 (7) Money in the fund that is available, but not used by the end of
15 each fiscal year, must be accumulated and applied to payments to
16 nursing homes in the next fiscal year.

17 (8) Funds resulting from any increase in the quality assurance fee
18 over and above the initial calculation of the fee referenced in section
19 4(1) of this act, shall only be used to increase nursing facility
20 medicaid rates above those calculated by the state plan methodology in
21 effect on January 1, 2010, without application of the budget dial.

22 NEW SECTION. **Sec. 4.** (1) Annually, before July 1st of each year,
23 the department shall calculate the quality assurance fee rates that
24 nonexempt providers will report and pay monthly for each nonmedicare
25 patient day. The quality assurance fee shall be set at a percentage of
26 total aggregate net resident service revenue of assessed facilities
27 which maintains the nursing facilities medicaid rates, net of the
28 impact for reimbursement of the medicaid share of the fee itself, in an
29 amount equal to or greater than rates paid on the date this act takes
30 effect. As of the effective date of this act the quality assurance fee
31 shall not exceed 2.8 percent of net patient services revenues and shall
32 be calculated and paid on a per resident day basis exclusive of
33 medicare patient days. The department shall notify providers of the
34 quality assurance fee and provide a standardized form to complete and
35 submit with payments. The department shall collect the quality
36 assurance fee on health care items or services provided by nursing

1 facilities for the purpose of obtaining federal financial participation
2 under the state's medicaid program.

3 (2) The quality assurance fee shall, at no time, be greater than
4 the maximum percentage of the nursing facility industry reported net
5 patient service revenues allowed under federal law or regulation.

6 (3) The per resident day assessment rate shall be the same amount
7 for each affected facility except as prescribed in subsection (4) of
8 this section.

9 (4) In accordance with the redistribution method set forth in 42
10 C.F.R. Sec. 433.68(e)(1) and (2), the department shall seek a waiver of
11 the broad-based and uniform provider assessment requirements of federal
12 law to exclude certain nursing facilities from the quality assurance
13 fee and to permit certain high volume medicaid nursing facilities or
14 facilities with a high number of total annual resident days to pay the
15 quality assurance fee at a lesser amount per nonmedicare patient day:

16 (a) The department shall exempt the following nursing facility
17 providers from the quality assurance fee subject to federal approval
18 under 42 C.F.R. Sec. 433.68(e)(2):

19 (i) Continuing care retirement communities as defined in section 2
20 of this act;

21 (ii) Nursing facilities with thirty-five or fewer beds;

22 (iii) State and county operated nursing facilities; and

23 (iv) Any nursing facility operated by a public hospital district
24 and nursing facilities that are hospital-based.

25 (b) The department shall lower the quality assurance assessment for
26 either certain high volume medicaid nursing facilities or certain
27 facilities with high resident volumes to meet the redistributive tests
28 of 42 C.F.R. Sec. 433.68(e)(2).

29 (5) The department shall notify the nursing facility operators of
30 any nursing facilities that would be exempted from the quality
31 assurance fee pursuant to the waiver request submitted to the federal
32 department of health and human services under this section. The
33 nursing facilities included in the waiver request may withhold payment
34 of the fee pending final action by the federal government on the
35 request for waiver.

36 (6) The imposition and collection of the quality assurance fee
37 shall be prohibited without federal government approval of a state
38 medicaid plan amendment authorizing federal financial participation.

1 (7) The department shall make and pursue all good faith efforts to
2 secure federal government approval of the nursing facility quality
3 assurance fee and the broad-based and uniformity waiver described in
4 section 4(4) of this act. If the nursing facility quality assurance
5 fee and the broad-based and uniformity waiver are not approved by the
6 federal government, notwithstanding any other provision of this
7 section, the department shall return any and all collected fee amounts
8 to the nursing facilities that paid them and shall discontinue the
9 imposition, assessment, and collection of the nursing facility quality
10 assurance fee.

11 (8) The department shall assess the nursing facility quality
12 assurance fee on a monthly basis and shall collect the fee from nursing
13 facility providers by no later than the end of the next succeeding
14 calendar month. The department shall require nursing facility
15 providers to report monthly their total number of days of care provided
16 to nonmedicare residents.

17 (9) The department shall adopt any rules necessary for the
18 administration and implementation of this section.

19 (10) All nursing facility quality assurance fee moneys collected
20 pursuant to this section by the department shall be transmitted to the
21 state treasurer who shall establish a medicaid nursing facility quality
22 assurance trust fund and shall credit all such amounts to the medicaid
23 nursing facility quality assurance trust fund.

24 (11) The provisions of this section shall become null and void,
25 having no force and effect, if any of the following occur:

26 (a) The nursing facility quality assessment and the broad-based and
27 uniformity waiver are not approved by the federal government; or

28 (b) The medicaid plan amendment reflecting the payment rates in
29 section 3(4) of this act is not approved by the federal government; or

30 (c) Any of the provisions of section 3 of this act are violated.

31 (12) If this section does not become operative or becomes null and
32 void, any and all moneys in the fund relating to the assessment shall
33 be returned on a pro rata basis to the nursing facilities that paid the
34 quality assurance assessment.

35 (13) If the nursing facility fails to make its payments timely, the
36 department may seek a remedy provided by law, including, but not
37 limited to:

1 (a) Withholding any medical assistance reimbursement payments until
2 such time as the assessment amount is recovered;

3 (b) Suspension or revocation of the nursing facility license; or

4 (c) Imposition of a civil fine up to one thousand dollars per day
5 for each delinquent payment, not to exceed the amount of the
6 assessment.

7 (14) Nursing facilities may not create a separate line-item charge
8 for the purpose of passing the fee through to residents.

9 **Sec. 5.** RCW 43.84.092 and 2009 c 479 s 31, 2009 c 472 s 5, and
10 2009 c 451 s 8 are each reenacted and amended to read as follows:

11 (1) All earnings of investments of surplus balances in the state
12 treasury shall be deposited to the treasury income account, which
13 account is hereby established in the state treasury.

14 (2) The treasury income account shall be utilized to pay or receive
15 funds associated with federal programs as required by the federal cash
16 management improvement act of 1990. The treasury income account is
17 subject in all respects to chapter 43.88 RCW, but no appropriation is
18 required for refunds or allocations of interest earnings required by
19 the cash management improvement act. Refunds of interest to the
20 federal treasury required under the cash management improvement act
21 fall under RCW 43.88.180 and shall not require appropriation. The
22 office of financial management shall determine the amounts due to or
23 from the federal government pursuant to the cash management improvement
24 act. The office of financial management may direct transfers of funds
25 between accounts as deemed necessary to implement the provisions of the
26 cash management improvement act, and this subsection. Refunds or
27 allocations shall occur prior to the distributions of earnings set
28 forth in subsection (4) of this section.

29 (3) Except for the provisions of RCW 43.84.160, the treasury income
30 account may be utilized for the payment of purchased banking services
31 on behalf of treasury funds including, but not limited to, depository,
32 safekeeping, and disbursement functions for the state treasury and
33 affected state agencies. The treasury income account is subject in all
34 respects to chapter 43.88 RCW, but no appropriation is required for
35 payments to financial institutions. Payments shall occur prior to
36 distribution of earnings set forth in subsection (4) of this section.

1 (4) Monthly, the state treasurer shall distribute the earnings
2 credited to the treasury income account. The state treasurer shall
3 credit the general fund with all the earnings credited to the treasury
4 income account except:

5 The following accounts and funds shall receive their proportionate
6 share of earnings based upon each account's and fund's average daily
7 balance for the period: The aeronautics account, the aircraft search
8 and rescue account, the budget stabilization account, the capitol
9 building construction account, the Cedar River channel construction and
10 operation account, the Central Washington University capital projects
11 account, the charitable, educational, penal and reformatory
12 institutions account, the cleanup settlement account, the Columbia
13 river basin water supply development account, the common school
14 construction fund, the county arterial preservation account, the county
15 criminal justice assistance account, the county sales and use tax
16 equalization account, the data processing building construction
17 account, the deferred compensation administrative account, the deferred
18 compensation principal account, the department of licensing services
19 account, the department of retirement systems expense account, the
20 developmental disabilities community trust account, the drinking water
21 assistance account, the drinking water assistance administrative
22 account, the drinking water assistance repayment account, the Eastern
23 Washington University capital projects account, the education
24 construction fund, the education legacy trust account, the election
25 account, the energy freedom account, the energy recovery act account,
26 the essential rail assistance account, The Evergreen State College
27 capital projects account, the federal forest revolving account, the
28 ferry bond retirement fund, the freight congestion relief account, the
29 freight mobility investment account, the freight mobility multimodal
30 account, the grade crossing protective fund, the public health services
31 account, the health system capacity account, the personal health
32 services account, the high capacity transportation account, the state
33 higher education construction account, the higher education
34 construction account, the highway bond retirement fund, the highway
35 infrastructure account, the highway safety account, the high occupancy
36 toll lanes operations account, the industrial insurance premium refund
37 account, the judges' retirement account, the judicial retirement
38 administrative account, the judicial retirement principal account, the

1 local leasehold excise tax account, the local real estate excise tax
2 account, the local sales and use tax account, the medicaid nursing
3 facility quality assurance trust fund, the medical aid account, the
4 mobile home park relocation fund, the motor vehicle fund, the
5 motorcycle safety education account, the multimodal transportation
6 account, the municipal criminal justice assistance account, the
7 municipal sales and use tax equalization account, the natural resources
8 deposit account, the oyster reserve land account, the pension funding
9 stabilization account, the perpetual surveillance and maintenance
10 account, the public employees' retirement system plan 1 account, the
11 public employees' retirement system combined plan 2 and plan 3 account,
12 the public facilities construction loan revolving account beginning
13 July 1, 2004, the public health supplemental account, the public
14 transportation systems account, the public works assistance account,
15 the Puget Sound capital construction account, the Puget Sound ferry
16 operations account, the Puyallup tribal settlement account, the real
17 estate appraiser commission account, the recreational vehicle account,
18 the regional mobility grant program account, the resource management
19 cost account, the rural arterial trust account, the rural Washington
20 loan fund, the site closure account, the small city pavement and
21 sidewalk account, the special category C account, the special wildlife
22 account, the state employees' insurance account, the state employees'
23 insurance reserve account, the state investment board expense account,
24 the state investment board commingled trust fund accounts, the state
25 patrol highway account, the state route number 520 corridor account,
26 the supplemental pension account, the Tacoma Narrows toll bridge
27 account, the teachers' retirement system plan 1 account, the teachers'
28 retirement system combined plan 2 and plan 3 account, the tobacco
29 prevention and control account, the tobacco settlement account, the
30 transportation 2003 account (nickel account), the transportation
31 equipment fund, the transportation fund, the transportation improvement
32 account, the transportation improvement board bond retirement account,
33 the transportation infrastructure account, the transportation
34 partnership account, the traumatic brain injury account, the tuition
35 recovery trust fund, the University of Washington bond retirement fund,
36 the University of Washington building account, the urban arterial trust
37 account, the volunteer firefighters' and reserve officers' relief and
38 pension principal fund, the volunteer firefighters' and reserve

1 officers' administrative fund, the Washington fruit express account,
2 the Washington judicial retirement system account, the Washington law
3 enforcement officers' and firefighters' system plan 1 retirement
4 account, the Washington law enforcement officers' and firefighters'
5 system plan 2 retirement account, the Washington public safety
6 employees' plan 2 retirement account, the Washington school employees'
7 retirement system combined plan 2 and 3 account, the Washington state
8 health insurance pool account, the Washington state patrol retirement
9 account, the Washington State University building account, the
10 Washington State University bond retirement fund, the water pollution
11 control revolving fund, and the Western Washington University capital
12 projects account. Earnings derived from investing balances of the
13 agricultural permanent fund, the normal school permanent fund, the
14 permanent common school fund, the scientific permanent fund, and the
15 state university permanent fund shall be allocated to their respective
16 beneficiary accounts. All earnings to be distributed under this
17 subsection (4) shall first be reduced by the allocation to the state
18 treasurer's service fund pursuant to RCW 43.08.190.

19 (5) In conformance with Article II, section 37 of the state
20 Constitution, no treasury accounts or funds shall be allocated earnings
21 without the specific affirmative directive of this section.

22 NEW SECTION. **Sec. 6.** Sections 2 through 4 of this act are each
23 added to chapter 74.46 RCW.

24 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately.

28 NEW SECTION. **Sec. 8.** This act expires June 30, 2013.

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