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**ENGROSSED SUBSTITUTE SENATE BILL 6534**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senate Health & Long Term Care (originally sponsored by Senator Cleveland)

AN ACT Relating to an ambulance transport quality assurance fee; reenacting and amending RCW 43.84.092; adding a new chapter to Title 74 RCW; prescribing penalties; providing an expiration date; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The purpose of this chapter is to provide for a quality assurance fee for specified providers of emergency ambulance services as referenced in 42 C.F.R. Sec. 433.56, which will be used to add on to base funding from all other sources, thereby supporting additional medicaid payments to nonpublic and nonfederal providers of emergency ambulance services as specified in this chapter.

(2) The legislature finds that the payments to private emergency ambulance service providers for transports for medicaid recipients have not been increased since 2004, resulting in a loss for carriers who provide this service. This has resulted in the shifting of cost of medicaid transports to other payers.

(3) In adopting this chapter, it is the intent of the legislature:

(a) To impose an ambulance quality assurance fee to be used solely for the purposes specified in this chapter;

(b) To generate approximately twenty-two million dollars per state fiscal biennium in new state and federal funds by disbursing all of that amount to pay for medicaid emergency ambulance services, except costs of administration as specified in this chapter, in the form of additional payments to ambulance transport providers subject to the fee, which may not be a substitute for payments from other sources;

(c) Beginning July 1, 2021, to generate an amount equal to one-third of the annual quality assurance fee rate collection amount exclusive of any federal matching funds, to be used in lieu of state general fund payments for medicaid emergency ambulance services;

(d) That the total amount assessed not exceed the amount needed, in combination with all other available funds, to support the payments authorized by this chapter; and

(e) To condition the assessment on receiving federal approval for receipt of additional federal financial participation and on continuation of other funding sufficient to maintain aggregate payment levels to ambulance transport providers subject to the fee for emergency ambulance services covered by medicaid at least at the rates the state paid for those services on July 1, 2020, as adjusted for current enrollment and utilization.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Ambulance transport provider subject to the fee" means an ambulance transport provider that is licensed under RCW 18.73.130 that bills and receives patient care revenue from the provision of ambulance transports. "Ambulance transport provider subject to the fee" does not include a provider that is owned or operated by the state, cities, counties, fire protection districts, regional fire protection service authorities, port districts, public hospital districts, community services districts, health care districts, federally recognized Indian tribes, or any unit of government as defined in 42 C.F.R. Sec. 433.50.

(2) "Annual quality assurance fee rate" means the quality assurance fee per emergency ambulance transport during each applicable state fiscal year assessed on each ambulance transport provider subject to the fee.

(3) "Authority" means the Washington state health care authority.

(4) "Available fee amount" means the sum of the following:

(a) The amount deposited in the ambulance transport fund established under section 3 of this act during the applicable state fiscal year, less the amounts described in section 3(3)(a) of this act; and

(b) Any federal financial participation obtained as a result of the deposit of the amount described in this subsection, for the applicable state fiscal year.

(5) "Effective state medical assistance percentage" means a ratio of the aggregate expenditures from state-only sources for medicaid divided by the aggregate expenditures from state and federal sources for medicaid for a state fiscal year.

(6) "Emergency ambulance transport" means the act of transporting an individual by use of an ambulance during which a client receives needed emergency medical services en route to an appropriate medical facility. "Emergency ambulance transport" does not include transportation of beneficiaries by passenger cars, taxicabs, litter vans, wheelchair vans, or other forms of public or private conveyances, nor does it include transportation by an air ambulance provider. An "emergency ambulance transport" does not occur when, following evaluation of a patient, a transport is not provided.

(7) "Fee-for-service payment schedule" means the payment rates to ambulance transport providers for emergency ambulance transports by the authority without the inclusion of the add-on described in section 6 of this act.

(8) "Gross receipts" means the total amount of payments received as patient care revenue for emergency ambulance transports, determined on a cash basis of accounting. "Gross receipts" includes all payments received as patient care revenue for emergency ambulance transports from medicaid, medicare, commercial insurance, and all other payers as payment for services rendered.

(9) "Medicaid" means the medical assistance program and the state children's health insurance program as established in Title XIX and Title XXI of the social security act, respectively, and as administered in the state of Washington by the authority.

(10) "Program" means the ambulance quality assurance fee program established in this chapter.

NEW SECTION. **Sec.**  (1) A dedicated fund is hereby established within the state treasury to be known as the ambulance transport fund. The purpose and use of the fund shall be to receive and disburse funds, together with accrued interest, in accordance with this chapter. Moneys in the fund, including interest earned, shall not be used or disbursed for any purposes other than those specified in this chapter. Any amounts expended from the fund that are later recouped by the authority on audit or otherwise shall be returned to the fund. Moneys in the account may be spent only after appropriation.

(2) The quality assurance fees collected by the authority pursuant to section 5 of this act must be deposited in the ambulance transport fund.

(3) Disbursements from the fund may be made only:

(a) To pay for the authority's staffing and administrative costs directly attributable to administering this chapter, not to exceed five percent of the annual quality assurance fee rate collection amount, exclusive of any federal matching funds;

(b) To make increased payments to ambulance transport providers subject to the fee pursuant to section 6 of this act;

(c) To refund erroneous or excessive payments made by hospitals pursuant to this chapter; and

(d) Beginning July 1, 2021, for an amount equal to one-third of the annual quality assurance fee rate collection amount exclusive of any federal matching funds, to be used in lieu of state general fund payments for medicaid emergency ambulance services, provided that if the full amount of the payments required under section 6 of this act cannot be distributed in a given fiscal year, this amount must be reduced proportionately.

NEW SECTION. **Sec.**  (1) Each ambulance transport provider subject to the fee must report to the authority the number of emergency ambulance transports by payer type and the annual gross receipts for the state fiscal year ending June 30, 2020, pursuant to form and timing required by the authority. The authority shall establish the timing for such reporting to occur on or after August 15, 2020.

(2) Each ambulance transport provider subject to the fee must report to the authority the number of emergency ambulance transports by payer type for each state fiscal quarter commencing with the state fiscal quarter ending September 30, 2020, pursuant to form and timing required by the authority. The authority shall establish the timing for such reporting to occur on or after the forty-fifth day after the end of each applicable state fiscal quarter.

(3) Each ambulance transport provider subject to the fee must report to the authority the annual gross receipts for each state fiscal year commencing with the state fiscal year ending June 30, 2021, pursuant to form and timing required by the authority. The authority shall establish the timing for such reporting to occur on or after the forty-fifth day after the end of each applicable state fiscal year.

(4) The authority may require a certification by each ambulance transport provider subject to the fee under penalty of perjury of the truth of the reports required under this section. Upon written notice to an ambulance transport provider, the authority may impose a civil penalty of one hundred dollars per day against an ambulance transport provider for every day that an ambulance transport provider fails to make a report required by this section within five days of the date upon which the report was due. Any funds resulting from a penalty imposed pursuant to this subsection shall be deposited in the ambulance transport fund established in section 3 of this act.

NEW SECTION. **Sec.**  (1) Beginning July 1, 2021, and annually thereafter, the authority shall assess each ambulance transport provider subject to the fee, a quality assurance fee. Each ambulance transport provider subject to the fee must pay the quality assurance fee on a quarterly basis. The quarterly quality assurance fee payment shall be based on the annual quality assurance fee rate for the applicable state fiscal year multiplied by the number of emergency ambulance transports provided by the ambulance transport provider subject to the fee in the second quarter preceding the state fiscal quarter for which the fee is assessed.

(2) Beginning July 1, 2021, the annual quality assurance fee rate shall be calculated by multiplying the projected total annual gross receipts for all ambulance transport providers subject to the fee by five and one-half percent, which resulting product shall be divided by the projected total annual emergency ambulance transports by all ambulance transport providers subject to the fee for the state fiscal year.

(3) For each state fiscal year for which the quality assurance fee is assessed, the authority shall send each ambulance transport provider subject to the fee an assessment notice no later than thirty days prior to the beginning of the applicable state fiscal quarter. For each state fiscal quarter for which the quality assurance fee is assessed, the authority shall send to each ambulance transport provider subject to the fee an invoice of the quarterly quality assurance fee payment due for the quarter no later than thirty days before the payment is due. For each state fiscal quarter for which the quality assurance fee is assessed, the ambulance transport provider subject to the fee shall remit payment to the authority by the date established by the authority, which shall be no earlier than fifteen days after the beginning of the applicable state fiscal quarter.

(4)(a) Interest shall be assessed on quality assurance fees not paid on the date due at the rate and in the manner provided in RCW 43.20B.695. Interest shall be deposited in the ambulance transport fund established in section 3 of this act.

(b) In the event that any fee payment is more than sixty days overdue, the authority may deduct the unpaid fee and interest owed from any medicaid reimbursement payments owed to the ambulance transport provider until the full amount of the fee, interest, and any penalties assessed under this chapter are recovered. Any deduction made pursuant to this subsection shall be made only after the authority gives the ambulance transport provider written notification. Any deduction made pursuant to this subsection may be deducted over a period of time that takes into account the financial condition of the ambulance transport provider.

(c) In the event that any fee payment is more than sixty days overdue, a penalty equal to the interest charge described in (a) of this subsection shall be assessed and due for each month for which the payment is not received after sixty days. Any funds resulting from a penalty imposed pursuant to this subsection shall be deposited into the ambulance transport fund established in section 3 of this act.

(d) The authority may waive a portion or all of either the interest or penalties, or both, assessed under this chapter in the event the authority determines, in its sole discretion, that the ambulance transport provider has demonstrated that imposition of the full amount of the quality assurance fee pursuant to the timelines applicable under this chapter has a high likelihood of creating an undue financial hardship for the provider. Waiver of some or all of the interest or penalties pursuant to this subsection shall be conditioned on the ambulance transport provider's agreement to make fee payments on an alternative schedule developed by the authority.

(5) The authority shall accept an ambulance transport provider's payment even if the payment is submitted in a rate year subsequent to the rate year in which the fee was assessed.

(6) In the event of a merger, acquisition, or similar transaction involving an ambulance transport provider that has outstanding quality assurance fee payment obligations pursuant to this chapter, including any interest and penalty amounts owed, the resultant or successor ambulance transport provider shall be responsible for paying to the authority the full amount of outstanding quality assurance fee payments, including any applicable interest and penalties, attributable to the ambulance transport provider for which it was assessed, upon the effective date of such transaction. An entity considering a merger, acquisition, or similar transaction involving an ambulance transport provider may submit a request to the authority to ascertain the outstanding quality assurance fee payment obligations of the ambulance transport provider pursuant to this chapter as of the date of the authority's response to that request.

NEW SECTION. **Sec.**  (1) Beginning July 1, 2021, and for each state fiscal year thereafter, reimbursement for emergency ambulance transports provided by ambulance transport providers subject to the fee shall be increased by application of an add-on to the associated medicaid fee-for-service payment schedule. The add-on increase to the fee-for-service payment schedule shall result in a total reimbursement per emergency ambulance transport that is at least sixty percent of the statewide average medicare rate for an emergency ambulance transport or similar service.

(2) The increased payments required by this section shall be funded solely from the following:

(a) The quality assurance fee set forth in section 5 of this act, along with any interest or other investment income earned on those funds; and

(b) Federal reimbursement and any other related federal funds.

(3) The proceeds of the quality assurance fee set forth in section 5 of this act, the matching amount provided by the federal government, and any interest earned on those proceeds shall be used to supplement, and not to supplant, existing funding for emergency ambulance transports provided by ambulance transport providers subject to the fee.

(4) Notwithstanding any provision of this chapter, the authority may seek federal approval to implement any add-on increase to the fee-for-service payment schedule pursuant to this section for any state fiscal year or years, as applicable, on a time-limited basis for a fixed program period, as determined by the authority.

NEW SECTION. **Sec.**  The authority may adopt rules to implement this chapter.

NEW SECTION. **Sec.**  (1)(a) The authority shall request any approval from the federal centers for medicare and medicaid services it determines are necessary for the use of fees pursuant to this chapter and for the purpose of receiving associated federal matching funds.

(b) This chapter shall be implemented only to the extent that any necessary federal approvals are obtained and federal financial participation is available. The quality assurance fee pursuant to section 5 of this act shall only be assessed and collected for quarters in which the add-on pursuant to section 6 of this act is paid.

(2) The authority may modify or make adjustments to any methodology, fee amount, or other provision specified in this chapter to the extent necessary to meet the requirements of federal law or regulations or to obtain federal approval.

NEW SECTION. **Sec.**  If there is a delay in the implementation of this chapter for any reason, including a delay in any required approval of the quality assurance fee and reimbursement methodology specified by the federal centers for medicare and medicaid services, the following shall apply:

(1) An ambulance transport provider subject to the fee may be assessed the amount the provider would be required to pay to the authority if the add-on increase to the fee-for-service payment schedule described in section 6 of this act were already approved, but shall not be required to pay the fee until the add-on increase to the fee-for-service payment schedule described in section 6 of this act is approved. The authority shall establish a schedule for payment of retroactive fees pursuant to this subsection in consultation with ambulance transport providers subject to the fee to minimize the disruption to the cash flow of ambulance transport providers subject to the fee.

(2) The authority may retroactively implement the add-on increase to the fee-for-service payment schedule pursuant to section 6 of this act to the extent the authority determines that federal financial participation is available.

NEW SECTION. **Sec.**  (1) The assessment, collection, and disbursement of funds under this chapter shall be conditional upon:

(a) The federal centers for medicare and medicaid services not determining that the quality assurance fee revenues may not be used for the purposes set forth in this chapter;

(b) The state not reducing its fee-for-service payment schedule for emergency ambulance transports provided by ambulance transport providers subject to the fee;

(c) The state not delegating responsibility to pay for emergency ambulance transports to a managed care organization, prepaid inpatient health plan, or prepaid ambulatory health plan, as those terms are defined in 42 C.F.R. Sec. 438.2;

(d) Federal financial participation being available and not otherwise jeopardized; and

(e) The program not prohibiting, diminishing, or harming the ground emergency medical transportation services reimbursement program described in RCW 41.05.730.

(2) This chapter ceases to be operative on the first day of the state fiscal year beginning on or after the date one or more of the following conditions is satisfied:

(a) The federal centers for medicare and medicaid services no longer allows the collection or use of the ambulance transport provider assessment provided in this chapter;

(b) The increase to the medicaid payments described in section 6 of this act no longer remains in effect;

(c) The quality assurance fee assessed and collected pursuant to this chapter is no longer available for the purposes specified in this chapter;

(d) A final judicial determination made by any state or federal court that is not appealed, or by a court of appellate jurisdiction that is not further appealed, in any action by any party, or a final determination by the administrator of the federal centers for medicare and medicaid services that is not appealed, that federal financial participation is not available with respect to any payment made under the methodology implemented pursuant to this chapter;

(e) The state reduces its fee-for-service payment schedule for emergency ambulance transports provided by ambulance transport providers subject to the fee;

(f) The state delegates responsibility to pay for emergency ambulance transports to a managed care organization, prepaid inpatient health plan, or prepaid ambulatory health plan, as those terms are defined in 42 C.F.R. Sec. 438.2; and

(g) The program prohibiting, diminishing, or harming the ground emergency medical transportation services reimbursement program described in RCW 41.05.730.

(3) In the event one or more of the conditions listed in subsection (2) of this section is satisfied, the authority shall notify, in writing and as soon as practicable, the secretary of state, the secretary of the senate, the chief clerk of the house of representatives, the appropriate fiscal and policy committees of the legislature, and the code reviser's office of the condition and the approximate date or dates that it occurred. The authority shall post the notice on the authority's web site.

(4)(a) Notwithstanding any other law, in the event this chapter becomes inoperative pursuant to subsection (2) of this section, the authority shall be authorized to conduct all appropriate close-out activities and implement applicable provisions of this chapter for prior state fiscal years during which this chapter was operative including, but not limited to, the collection of outstanding quality assurance fees pursuant to section 5 of this act and payments associated with any add-on increase to the medicaid fee-for-service payment schedule pursuant to section 6 of this act. During this close-out period, the full amount of the quality assurance fee assessed and collected remains available only for the purposes specified in this chapter.

(b) Upon a determination by the authority that all appropriate close-out and implementation activities pursuant to (a) of this subsection have been completed, the authority shall notify, in writing, the secretary of state, the secretary of the senate, the chief clerk of the house of representatives, the appropriate fiscal and policy committees of the legislature, and the code reviser's office of that determination. This chapter shall expire as of the effective date of the notification issued by the authority pursuant to this subsection.

**Sec.**  RCW 43.84.092 and 2019 c 421 s 15, 2019 c 403 s 14, 2019 c 365 s 19, 2019 c 287 s 19, and 2019 c 95 s 6 are each reenacted and amended to read as follows:

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

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

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

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

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The abandoned recreational vehicle disposal account, the aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the ambulance transport fund, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of licensing tuition recovery trust fund, the department of retirement systems expense account, the developmental disabilities community trust account, the diesel idle reduction account, the drinking water assistance account, the drinking water assistance administrative account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the electric vehicle account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the hospital safety net assessment fund, the industrial insurance premium refund account, the Interstate 405 and state route number 167 express toll lanes account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pollution liability insurance agency underground storage tank revolving account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound Gateway facility account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the statewide broadband account, the statewide tourism marketing account, the student achievement council tuition recovery trust fund, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the voluntary cleanup account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the vulnerable roadway user education account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

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

NEW SECTION. **Sec.**  Sections 1 through 10 and 13 of this act constitute a new chapter in Title 74 RCW.

NEW SECTION. **Sec.**  This act expires July 1, 2024.

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

**--- END ---**