
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-3716.1/10

ATTY/TYPIST: KK:rls

BRIEF DESCRIPTION: Establishing the medicaid nursing facility
quality assurance trust fund.

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

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

NEW SECTION. **Sec. 1.1.** It is the intent of the legislature to encourage maximization of financial resources eligible and available for medicaid services by establishing the medicaid nursing facility quality assurance trust fund to receive nursing facility quality assurance fees to use in securing federal matching funds under federally prescribed programs available through the state medicaid plan.

NEW SECTION. **Sec. 1.2.** For the purposes of this title, unless otherwise required by the context:

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

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

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

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

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

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

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

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

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

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

(10) "Nonoperating revenue" means income from activities not relating directly to the day-to-day operations of an organization.

Nonoperating revenue includes such items as gains on disposal of a facility's assets, dividends, and interest from security investments, gifts, grants, and endowments.

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

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

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

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

NEW SECTION. **Sec. 1.3.** (1) There is hereby created in the state treasury the medicaid nursing facility quality assurance trust fund.

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec. 1.4.** (1) Annually, before July 1st of each year, the department shall calculate the quality assurance fee rates that nonexempt providers will report and pay monthly for each nonmedicare patient day. The quality assurance fee shall be set at a

percentage of total aggregate net resident service revenue of assessed facilities which maintains the nursing facilities medicaid rates, net of the impact for reimbursement of the medicaid share of the fee itself, in an amount equal to or greater than rates paid on the date this act takes effect. As of the effective date of this act the quality assurance fee shall not exceed 2.8 percent of net patient services revenues and shall be calculated and paid on a per resident day basis exclusive of medicare patient days. The department shall notify providers of the quality assurance fee and provide a standardized form to complete and submit with payments. The department shall collect the quality assurance fee on health care items or services provided by nursing facilities for the purpose of obtaining federal financial participation under the state's medicaid program.

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

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

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

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

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

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

(iii) State and county operated nursing facilities; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 1.5. RCW 43.84.092 and 2009 c 479 s 31, 2009 c 472 s 5, and 2009 c 451 s 8 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:

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 aeronautics account, the aircraft search and rescue account, the budget stabilization 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 cleanup settlement account, the Columbia river basin water supply development account, the common school

construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election 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 congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the health system capacity account, the personal health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high occupancy toll lanes operations account, the industrial insurance premium refund 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 medicaid nursing facility quality assurance trust fund, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance 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 transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement 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 Washington loan fund, the site closure account, 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 corridor account, 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 transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, 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 urban arterial trust account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington fruit express 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 fund, and the Western Washington University capital projects 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, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(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. 1.6.** Sections 2 through 4 of this act are each added to chapter 74.46 RCW.

NEW SECTION. **Sec. 1.7.** 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.

NEW SECTION. **Sec. 1.8.** This act expires June 30, 2013.