

---

**SUBSTITUTE SENATE BILL 5341**

---

**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Winsley, Kline, Thibaudeau, Carlson, Parlette and Kohl-Welles)

READ FIRST TIME 02/24/03.

1 AN ACT Relating to a quality maintenance fee levied on nursing  
2 facilities; amending RCW 74.46.200; reenacting and amending RCW  
3 43.84.092; adding new sections to chapter 74.46 RCW; adding a new  
4 chapter to Title 82 RCW; repealing RCW 74.46.421; providing an  
5 effective date; providing a contingent expiration date; and declaring  
6 an emergency.

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

8 NEW SECTION. **Sec. 1.** The definitions in this section apply  
9 throughout this chapter unless the context clearly requires otherwise.

10 (1) "Annualize" means the number of reported patient days, divided  
11 by the number of days in the report period, the sum of which is  
12 multiplied by the number of days in the current calendar year.

13 (2) "Gross taxable income" means all revenue, without deduction,  
14 that is derived from the performance of nursing services, otherwise  
15 known as routine daily care revenue. "Gross taxable income" does not  
16 include other patient revenue, other operating revenue, or nonoperating  
17 revenue.

18 (3) "Other patient revenues" means income from sales of medical

1 supplies for patient care and from performing other than routine  
2 services for patient care.

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

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

14 (6) "Patient days" means a calendar day of care provided to a  
15 nursing facility resident, excluding a medicare patient day, which will  
16 include the day of admission and exclude the day of discharge; except  
17 that, when admission and discharge occur on the same day, one day of  
18 care shall be deemed to exist.

19 (7) "Medicare patient day" means a patient day for medicare  
20 beneficiaries on a medicare Part A stay and a patient day for persons  
21 who have opted for managed care coverage using their medicare benefit.

22 (8) "Multiplier" means the fixed dollar amount used to calculate  
23 the quality maintenance fee.

24 (9) "Nursing facility" has the same meaning as the term is defined  
25 in RCW 18.51.010, except that nursing homes certified as institutions  
26 for mental diseases and residential habilitation centers operating  
27 under chapter 71A.20 RCW are not included in the term "nursing  
28 facility."

29 (10) "Nursing facility operator" means a person who engages in the  
30 business of operating a nursing facility or facilities within this  
31 state.

32 NEW SECTION. **Sec. 2.** (1) In addition to any other tax, a quality  
33 maintenance fee is imposed on every nursing facility operator in this  
34 state, to be calculated in accordance with subsection (2) of this  
35 section.

36 (2)(a) A nursing facility operator's quality maintenance fee is

1 determined each quarter by multiplying the patient days of each nursing  
2 facility operated by that person, as reported under (b) of this  
3 subsection by the multiplier.

4 (b) Each nursing facility operator shall file a return with the  
5 department on a quarterly basis. The return is due within thirty days  
6 after the end of each calendar year quarter. The return must include  
7 the following:

8 (i) The number of patient days for nursing facilities operated by  
9 that person in that quarter; and

10 (ii) Remittance of the nursing facility operator's quality  
11 maintenance fee for that quarter.

12 (3) For the fiscal year beginning July 1, 2004, the department  
13 shall calculate the multiplier to produce an aggregate annual quality  
14 maintenance fee payment equal to six percent of the aggregate annual  
15 gross taxable income for all nursing facilities in the prior calendar  
16 year.

17 (a) The department shall determine six percent of the aggregate  
18 annual gross taxable income of all nursing facility operators in the  
19 prior calendar year, as reported under section 3 of this act, and  
20 divide that number by the total number of patient days for all nursing  
21 facilities, as reported under section 3 of this act. The resulting  
22 quotient is the multiplier for that fiscal year. The department shall  
23 announce the multiplier to all nursing facility operators by June 1st  
24 of each year.

25 (b) If necessary, the department shall prospectively adjust the  
26 multiplier during the fiscal year so that the annual aggregate quality  
27 maintenance fee payments do not exceed six percent of the aggregate  
28 annual gross taxable income for all nursing facilities in the prior  
29 calendar year. In making any such adjustment, the department shall  
30 annualize the patient days reported by nursing facilities under  
31 subsection (2)(b) of this section, total those annualized patient days,  
32 and divide that sum into the aggregate annual gross taxable income used  
33 under (a) of this subsection. The department shall announce any change  
34 in the multiplier to all nursing facilities as soon as it is  
35 determined. The adjusted multiplier shall apply to the quarter in  
36 which it is announced and any remaining quarters in that fiscal year.

37 (4) Between the effective date of this act and June 30, 2004, the  
38 multiplier shall be nine dollars and twenty-five cents.

1        NEW SECTION.    **Sec. 3.** Each nursing facility operator shall file a  
2 report with the department listing the patient days and gross taxable  
3 income for the immediately preceding calendar year. The nursing  
4 facility operator shall not report this information for any nursing  
5 facility that operated for less than six months of the calendar year.  
6 If a nursing facility operated for more than six months, but less than  
7 the entire calendar year, the nursing facility operator shall annualize  
8 the reported data for that facility. The report shall be filed with  
9 the department by April 30th of each year beginning April 30, 2004. If  
10 a nursing facility operator's report is not provided to the department  
11 by April 30th, the department may impose a penalty on the nursing  
12 facility operator of one hundred dollars for each day thereafter until  
13 the report is provided to the department.

14        NEW SECTION.    **Sec. 4.** The quality maintenance fee assessed and  
15 collected under this act, and any interest or penalties thereon imposed  
16 and collected pursuant to chapter 82.32 RCW, shall be deposited in the  
17 nursing facility medicaid trust fund account created in section 6 of  
18 this act.

19        NEW SECTION.    **Sec. 5.** All of chapter 82.32 RCW, except RCW  
20 82.32.045 and 82.32.270, applies to the fee imposed by this chapter, in  
21 addition to any other provisions of law for the payment and enforcement  
22 of the fee imposed by this chapter. The department may adopt rules, in  
23 accordance with chapter 34.05 RCW, as necessary to provide for the  
24 effective administration of this chapter.

25        NEW SECTION.    **Sec. 6.** (1) The nursing facility medicaid trust fund  
26 account is created in the state treasury. All receipts from the  
27 assessed and collected quality maintenance fees, any penalties imposed  
28 and collected, and the federal financial participation amounts derived  
29 from the assessed fees paid by the nursing facilities must be deposited  
30 in the account. Money in the account may be spent only after  
31 appropriation. Expenditures from the account may only be used for the  
32 purposes of this section.

33        (2) The nursing facility medicaid trust fund account shall be: (a)  
34 Separate and distinct from the state's general fund; (b) supplementary  
35 to the base level of the Washington state medicaid program funds

1 appropriated by the legislature to maintain the state's nursing  
2 facility medicaid program. To determine the base level of the nursing  
3 facility medicaid program funds, the amount appropriated for nursing  
4 facilities in the 2001-03 biennial appropriations act shall be used and  
5 will establish the base level amount. The base level amount shall be  
6 adjusted annually by an inflation factor that shall be equal to the  
7 inflation factor used to annually update the medicare skilled nursing  
8 facility payment rates; (c) exempt from budgetary cuts, reductions, or  
9 eliminations caused by general revenue shortfalls; and (d)  
10 supplementary to any increases in state general funds resulting from  
11 any increase in the federal financial participation percentage amounts.

12 (3)(a) The nursing facility medicaid trust fund account shall be  
13 used only to prospectively pay, under section 8 of this act, each  
14 nursing facility the medicaid proportionate amount of the quality  
15 maintenance fee paid under this act, to the extent permitted under  
16 section 1903(w) of the social security act and to fund:

17 (i) The nursing facility medicaid payment method improvements made  
18 by the fifty-eighth legislature; or

19 (ii) The nursing facility rate stabilization component created in  
20 section 7 of this act.

21 (b) Should the state fail to appropriate funds in an amount that is  
22 sufficient to maintain the base level funding for nursing facilities,  
23 including the annual inflation adjustment amounts, as described in  
24 subsection (2) of this section, all funds collected and held in the  
25 nursing facility medicaid trust fund account shall be distributed to  
26 the nursing facility rate stabilization component established in  
27 section 7 of this act.

28 (4) The funds in the nursing facility medicaid trust fund account  
29 shall not be used for any purpose other than that expressly allowed  
30 under this section.

31 (5) All funds collected and maintained in the nursing facility  
32 medicaid trust fund account shall accrue interest. The accrued  
33 interest amounts shall be available and expended in accordance with  
34 this act.

35 (6) If the operation of the nursing facility medicaid trust fund  
36 account is terminated for any reason, any and all amounts remaining in  
37 the nursing facility medicaid trust fund account shall be immediately

1 disbursed to each contractor in an amount that is representative of the  
2 contractor's percentage of the total annual assessed fee amount.

3 (7) No nursing facility is guaranteed, expressly or otherwise, that  
4 any additional money paid to the nursing facility will equal or exceed  
5 the amount of its quality maintenance fee.

6 NEW SECTION. **Sec. 7.** (1) Effective July 1, 2003, and consistent  
7 with the provisions of section 6 of this act, a new nursing facility  
8 rate component shall be created and referred to as the nursing facility  
9 rate stabilization component.

10 (2)(a) As long as the base level funding adjusted for inflation has  
11 been maintained by the state under section 6 of this act, the nursing  
12 facility rate stabilization component shall include quality maintenance  
13 fee amounts that may remain in the nursing facility medicaid trust fund  
14 account after the nursing facility medicaid payment method improvements  
15 as enacted by the fifty-eighth legislature have been funded.

16 (b) If the state has not maintained its base level funding  
17 adjusted for inflation under section 6 of this act, then the nursing  
18 facility rate stabilization component shall consist of all funds  
19 collected and held in the nursing facility medicaid trust fund account.

20 (3) By June 1st of each year, the department shall determine  
21 whether the state will maintain its base level funding, adjusted for  
22 inflation, under section 6 of this act.

23 (a) If the department determines that the state will meet its base  
24 level funding adjusted for inflation, then by the first day of the  
25 third quarter of each rate year, the department will estimate, based on  
26 census and medicaid payments made to date, whether any funds will  
27 remain in the nursing facility medicaid trust fund account by June 30th  
28 of each rate year after meeting the funding obligations of the nursing  
29 facility medicaid payment method improvements. If the department  
30 determines that funds will be remaining in the nursing facility  
31 medicaid trust fund account as of June 30th of the applicable rate  
32 year, the department shall divide the total amount of the anticipated  
33 unexpended funds by the total number of medicaid patient days. The  
34 result shall be a per patient day rate amount that shall be added to  
35 the total medicaid rate that shall be paid beginning on the first day  
36 of the third quarter of the applicable rate year until the nursing  
37 facility medicaid trust fund account is fully expended.

1 (b) If the department determines that the state will not meet its  
2 base level funding adjusted for inflation, then the department shall  
3 divide the total amount of the funds held in the nursing facility  
4 medicaid trust fund account by the total number of medicaid patient  
5 days. The result shall be a per patient day rate amount that shall be  
6 added to each nursing facility's total medicaid rate that shall be paid  
7 beginning on July 1st of each applicable rate year until the nursing  
8 facility medicaid trust fund account is fully expended.

9 (4) The nursing facility rate stabilization component is not  
10 subject to minimum occupancy requirements, medians, lids, or any other  
11 limitations contained in the rate setting part of chapter 74.46 RCW,  
12 Part E.

13 NEW SECTION. **Sec. 8.** (1) Beginning July 1, 2003, there shall be  
14 a new rate allocation component that shall correspond to the quality  
15 maintenance fee amounts paid by a nursing facility.

16 (2) By July 1, 2003, and by each subsequent July 1st, the  
17 department shall determine each medicaid nursing facility's quality  
18 maintenance fee amount that will be paid to the department of revenue  
19 for each fiscal year. In making this determination, the department  
20 shall consult with department of revenue staff and calculate the  
21 quality maintenance fee amounts for each medicaid nursing facility  
22 using the method described in section 2 of this act. The department  
23 shall monitor quality maintenance fee collections and shall notify the  
24 department of revenue if it appears that an adjustment to the  
25 multiplier is necessary under section 2 of this act.

26 (3) Based on the amount of the quality maintenance fee amount that  
27 each medicaid nursing facility is required to pay, the department shall  
28 then determine the per resident day amount that is proportionate to the  
29 nursing facility's medicaid resident days to total actual days during  
30 the applicable reporting period. This per medicaid resident day amount  
31 shall be the quality maintenance fee component rate allocation that  
32 shall be paid to each medicaid nursing facility on a prospective basis.

33 **Sec. 9.** RCW 43.84.092 and 2002 c 242 s 2, 2002 c 114 s 24, and  
34 2002 c 56 s 402 are each reenacted and amended to read as follows:

35 (1) All earnings of investments of surplus balances in the state

1 treasury shall be deposited to the treasury income account, which  
2 account is hereby established in the state treasury.

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

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

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

30 (a) The following accounts and funds shall receive their  
31 proportionate share of earnings based upon each account's and fund's  
32 average daily balance for the period: The capitol building  
33 construction account, the Cedar River channel construction and  
34 operation account, the Central Washington University capital projects  
35 account, the charitable, educational, penal and reformatory  
36 institutions account, the common school construction fund, the county  
37 criminal justice assistance account, the county sales and use tax  
38 equalization account, the data processing building construction



1 account, the deferred compensation administrative account, the deferred  
2 compensation principal account, the department of retirement systems  
3 expense account, the drinking water assistance account, the drinking  
4 water assistance administrative account, the drinking water assistance  
5 repayment account, the Eastern Washington University capital projects  
6 account, the education construction fund, the emergency reserve fund,  
7 the federal forest revolving account, the health services account, the  
8 public health services account, the health system capacity account, the  
9 personal health services account, the state higher education  
10 construction account, the higher education construction account, the  
11 highway infrastructure account, the industrial insurance premium refund  
12 account, the judges' retirement account, the judicial retirement  
13 administrative account, the judicial retirement principal account, the  
14 local leasehold excise tax account, the local real estate excise tax  
15 account, the local sales and use tax account, the medical aid account,  
16 the mobile home park relocation fund, the multimodal transportation  
17 account, the municipal criminal justice assistance account, the  
18 municipal sales and use tax equalization account, the natural resources  
19 deposit account, the nursing facility medicaid trust fund account, the  
20 oyster reserve land account, the perpetual surveillance and maintenance  
21 account, the public employees' retirement system plan 1 account, the  
22 public employees' retirement system combined plan 2 and plan 3 account,  
23 the public facilities construction loan revolving account beginning  
24 July 1, 2004, the public health supplemental account, the Puyallup  
25 tribal settlement account, the regional transportation investment  
26 district account, the resource management cost account, the site  
27 closure account, the special wildlife account, the state employees'  
28 insurance account, the state employees' insurance reserve account, the  
29 state investment board expense account, the state investment board  
30 commingled trust fund accounts, the supplemental pension account, the  
31 Tacoma Narrows toll bridge account, the teachers' retirement system  
32 plan 1 account, the teachers' retirement system combined plan 2 and  
33 plan 3 account, the tobacco prevention and control account, the tobacco  
34 settlement account, the transportation infrastructure account, the  
35 tuition recovery trust fund, the University of Washington bond  
36 retirement fund, the University of Washington building account, the  
37 volunteer fire fighters' and reserve officers' relief and pension  
38 principal fund, the volunteer fire fighters' and reserve officers'

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

18 (b) The following accounts and funds shall receive eighty percent  
19 of their proportionate share of earnings based upon each account's or  
20 fund's average daily balance for the period: The aeronautics account,  
21 the aircraft search and rescue account, the county arterial  
22 preservation account, the department of licensing services account, the  
23 essential rail assistance account, the ferry bond retirement fund, the  
24 grade crossing protective fund, the high capacity transportation  
25 account, the highway bond retirement fund, the highway safety account,  
26 the motor vehicle fund, the motorcycle safety education account, the  
27 pilotage account, the public transportation systems account, the Puget  
28 Sound capital construction account, the Puget Sound ferry operations  
29 account, the recreational vehicle account, the rural arterial trust  
30 account, the safety and education account, the special category C  
31 account, the state patrol highway account, the transportation equipment  
32 fund, the transportation fund, the transportation improvement account,  
33 the transportation improvement board bond retirement account, and the  
34 urban arterial trust account.

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

1       **Sec. 10.** RCW 74.46.200 and 1980 c 177 s 20 are each amended to  
2 read as follows:

3       (1) Allowable costs shall be reduced by the contractor whenever the  
4 item, service, or activity covered by such costs generates revenue or  
5 financial benefits other than through the contractor's normal billing  
6 for care services; except that, unrestricted grants, gifts, and  
7 endowments, and interest therefrom, will not be deducted from the  
8 allowable costs of a nonprofit facility.

9       (2) Where goods or services are sold, the amount of the reduction  
10 shall be the actual cost relating to the item, service, or activity.  
11 In the absence of adequate documentation of cost, it shall be the full  
12 amount of the revenue received. Where financial benefits such as  
13 purchase discounts or rebates are received, the amount of the reduction  
14 shall be the amount of the discount or rebate.

15       (3) This section does not apply to the nursing facility rate  
16 stabilization component under section 7 of this act.

17       NEW SECTION. **Sec. 11.** By July 1, 2003, the department shall  
18 submit, for approval, an amendment to the state plan to include the  
19 quality maintenance fee, to the federal centers for medicare and  
20 medicaid services. The department shall, with due diligence, respond  
21 to any questions from the centers for medicare and medicaid services so  
22 that the approval process is not unnecessarily delayed.

23       NEW SECTION. **Sec. 12.** (1) As used in this section, "expiration  
24 date" means the earliest of:

25       (a) The effective date that federal medicaid matching funds for the  
26 purposes specified in section 6 of this act become unavailable or are  
27 substantially reduced, as such date is certified by the secretary of  
28 social and health services;

29       (b) The effective date that federal medicaid matching funds for the  
30 purposes specified in section 6 of this act become unavailable or are  
31 substantially reduced, as determined by a permanent injunction, court  
32 order, or final court decision;

33       (c) The effective date of a permanent injunction, court order, or  
34 final court decision that prohibits in whole or in part the collection  
35 of the quality maintenance fee under section 2 of this act; or

36       (d) July 1, 2005.

1 (2) Sections 1 through 7 of this act expire on the expiration date  
2 determined under this section.

3 (3) The expiration of sections 1 through 7 of this act shall not be  
4 construed as affecting any existing right acquired or liability or  
5 obligation incurred under those sections or under any rule or order  
6 adopted under those sections, nor as affecting any proceeding  
7 instituted under those sections.

8 NEW SECTION. **Sec. 13.** RCW 74.46.421 (Purpose of part E--Nursing  
9 facility medicaid payment rates) and 2001 1st sp.s. c 8 s 4, 1999 c 353  
10 s 3, & 1998 c 322 s 18 are each repealed.

11 NEW SECTION. **Sec. 14.** If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 15.** (1) Sections 1 through 5 and 12 of this act  
16 constitute a new chapter in Title 82 RCW.

17 (2) Sections 6 through 8 and 11 of this act are each added to  
18 chapter 74.46 RCW and codified with the subchapter heading of "nursing  
19 facility medicaid trust fund account."

20 NEW SECTION. **Sec. 16.** This act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of the  
22 state government and its existing public institutions, and takes effect  
23 July 1, 2003, except for section 11 of this act which takes effect  
24 immediately.

--- END ---