SENATE BILL REPORT
SB 6751

As of February 1, 2010

Title: An act relating to establishing the medicaid nursing facility quality assurance trust fund.

Brief Description: Establishing the medicaid nursing facility quality assurance trust fund.

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

Brief History:
Committee Activity: Ways & Means: 2/01/10.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Megan Atkinson (786-7446)

Background: The current Washington Medicaid program provides health and long-term care assistance to low-income individuals, is administered by the state in compliance with federal laws and regulations, and is jointly funded using state and federal dollars. The federal funds are matching funds and are referred to as the Federal Financial Participation (FFP), or the Federal Medical Assistance Percentage (FMAP). The FMAP is calculated based on average per capita income and is usually between 50 and 51 percent for Washington. Typically the state pays the remainder using state general fund dollars.

Medicaid law and regulations provide for a particular Medicaid funding vehicle that states can utilize to fund a portion of their state share of Medicaid program costs. This funding vehicle is often referred to as a Medicaid provider tax or sometimes as a provider assessment or provider fee.

States can use the proceeds from the tax to make Medicaid provider payments and claim the federal matching share of those payments. Essentially states use the proceeds from the provider tax to offset a portion of the state funds that would have been required to fund the Medicaid program.

Federal regulations define the rules for Medicaid provider taxes. Specifically, provider taxes must:

- be imposed on a permissible class of health care services;
- be broad-based or apply to all providers within a class;

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- be uniform or apply the same rate to all providers within a class; and
- avoid hold harmless arrangements in which collected taxes are returned directly or indirectly to taxpayers.

Nineteen different types of providers are included in the defined permissible classes of health care providers and as such can be included in a provider tax. Some examples include inpatient hospital services, outpatient hospital services, nursing facility services, and physician services.

A state can request a waiver from the broad-based and uniform requirements and the hold harmless provision doesn't apply if the tax is at or below 5.5 percent of provider revenues (this threshold of 5.5 percent of revenues applies through federal Fiscal Year 2011; thereafter the threshold is 6.0 percent of revenues).

If a waiver of the broad-based and uniform requirements is requested then the state must show that the tax is generally redistributive and the amount of the tax is not directly correlated to Medicaid payments. Federal regulations lay out detailed statistical tests that states must use to show this; essentially the tests are designed to measure the degree to which the Medicaid program incurs a greater tax burden than if the broad-based and uniform requirements were met (or not waived).

Currently 44 states (including Washington) and the District of Columbia have at least one type of Medicaid provider tax.

Skilled nursing facilities (nursing homes) are licensed by the Department of Social and Health Services (DSHS) and provide 24-hour supervised nursing care, personal care, therapy, nutrition management, organized activities, social services, laundry services, and room and board to three or more residents. Currently, there are over 200 licensed facilities throughout the state. Medicaid rates for nursing facilities (i.e., payments for providing care and services to eligible, low-income residents) are generally based on a facility's costs, its occupancy level, and the individual care needs of its residents.

Summary of Bill: A quality assurance fee is imposed on certain nursing facilities.

The fee is assessed on a per-resident day basis, paid monthly, and limited to 2.8 percent of net patient services revenues. The fee does not apply to Medicare residents and certain types of facilities are exempt from paying the fee. The exemptions are:

- continuing care retirement communities, as defined in the bill;
- nursing facilities with 35 or fewer beds;
- state, county, and public hospital district operated nursing facilities; and
- hospital-based nursing facilities.

In addition, DSHS must administer the fee in a tiered manner such that a lower fee is assessed for either certain high volume Medicaid nursing facilities, as defined, or certain facilities with high resident volumes. This lower fee is to be assessed such that the statistical redistributive tests required by federal law are met.

The bill establishes the Medicaid Nursing Facility Quality Assurance Trust Fund and directs all proceeds from the fee into this fund. The fund is subject to appropriation and can only be used for:

- immediate pass-through to nursing facilities or rate add-on to reimburse the Medicaid share of the fee;
- maintenance and enhancement of the Medicaid nursing facility rates; and
- administration of the collection and disbursement of the fee; however, these administrative expenses cannot exceed one-half of 1 percent of the proceeds from the fee.

Further, the bill clarifies that the fee proceeds may not be used to replace existing state expenditures, and are not to be included in any adjustments required by the nursing home rate ceiling that is specified in the biennial appropriations act. Any future increases in the fee must only be used to increase nursing facility Medicaid rates.

The bill is null and void if the federal Centers for Medicare and Medicaid Services (CMS) does not approve the waiver of the broad-based and uniform requirements or does not approve the state Medicaid plan amendment incorporating the fee into the plan, of if any of the expenditure conditions are violated.

Certain delinquency penalties are provided, including withholding the facilities' medical assistance reimbursement payment, suspending the facilities' license, or imposing a fine.

Facilities are prohibited from creating a separate line-item charge for the purposes of passing the fee through to residents.

The bill expires June 30, 2013.

Appropriation: None.

Fiscal Note: Requested on January 25, 2010.
[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.