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HOUSE BILL 3021

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By Representatives Green, Ericksen, Kessler, Kretz, Seaquist, Chandler, Van De Wege, Armstrong, Sullivan, Miloscia, Simpson, Williams, Rolfes, Bailey, Johnson, Hinkle, Ross, Finn, Moeller, Lias, Appleton, Wallace, Conway, and Kenney

Read first time 01/20/10. Referred to Committee on Ways & Means.

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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