Department of Legislative Services

Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 130 (The Speaker, *et al.*) (By Request – Administration)

Appropriations and Health and Government Operations Budget and Taxation

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Nursing Facilities - Quality Assessment - Medicaid Reimbursement

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This Administration bill authorizes the Department of Health and Mental Hygiene (DHMH) to impose a quality assessment on each freestanding nursing facility with 45 or more beds. Continuing care retirement communities (CCRCs) are not subject to the assessment.

The bill takes effect July 1, 2007 and terminates June 30, 2012.

Fiscal Summary

State Effect: Assuming federal waiver approval, special fund revenues from the quality assessment could increase by $15.9 million in FY 2008. Medicaid expenditures could increase by $31.9 million (50% special funds, 50% federal funds) to fully fund the nursing facility reimbursement system and increase Medicaid nursing facility provider rates. Future year estimates reflect 4.5% Medicaid inflation for nursing facilities.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
SF Revenue	$15,958,500	$22,235,500	$23,236,100	$24,281,700	$25,374,400
SF Expenditure	15,958,500	22,235,500	23,236,100	24,281,700	25,374,400
FF Expenditure	15,958,500	22,235,500	23,236,100	24,281,700	25,374,400
Net Effect	($15,958,500)	($22,235,500)	($23,236,100)	($24,281,700)	($25,374,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Bill Summary: The assessment may not exceed 2% of the net operating revenues for all nursing facilities for the previous fiscal quarter. The aggregate annual assessment may not exceed the amount necessary to fully fund the nursing facility payment system. Each nursing facility must pay, by the sixteenth day after each quarter of the fiscal year, an amount determined by DHMH based an amount per non-Medicare day, of service for the previous quarter. Revenues from the assessment must be collected by the State Comptroller and distributed to a special fund to be used by DHMH only to fund nursing facility reimbursement under the Medicaid program. These revenues must be in addition to and not supplant funds already appropriated for nursing facility reimbursement.

DHMH must request permission from the federal Centers for Medicare and Medicaid Services (CMS) to exclude nursing home beds in CCRCs from the assessment. DHMH may modify elements that determine the quality assessment, including minimum licensed bed capacity, as a condition for the approval of CMS. The assessment does not take effect until CMS approves a waiver to exclude CCRCs without a reduction in federal financial participation. If approved, the assessment would begin the first day of the State fiscal quarter during which the waiver is approved.

The assessment will terminate if: (1) it is not permissible under § 1903(w) of the Social Security Act; or (2) the nursing facility payment system is replaced with a system that is not cost-based and DHMH is unable to obtain the enhanced federal match.

Annually beginning March 1, 2008, DHMH must report to the General Assembly on the implementation of the assessment including • the percentage and amount of the assessment charged to each nursing facility; • the number of nursing facilities subject to the assessment with a net loss; and • a comparison of the total amount provided in the Medicaid budget for nursing home reimbursement in the current year to the amount proposed for the upcoming fiscal year.

Uncodified language provides that it is the intent of the General Assembly that, beginning July 1, 2008, up to 25% of the revenues from the quality assessment, to the extent allowed under federal law, must be distributed to nursing facilities based on accountability measures. DHMH, in consultation with stakeholders, must develop accountability measures that indicate quality of care or a commitment to quality of care and are objective, measurable, and have a correlation to residents' quality of life and care.

Distribution of revenues based on accountability measures must be used as an incentive for nursing facilities to provide quality care and may not be used to hold harmless any nursing facility.

Current Law: The federal Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 placed restrictions on states' use of provider-generated revenues. State provider taxes cannot exceed 25% of a state's share of Medicaid expenditures, must be broad-based, uniform, and cannot hold providers harmless. A broad-based tax is imposed on all providers in the class. A uniform tax is one imposed at the same rate for all providers. States that wish to exempt certain nursing facilities from their provider tax must get approval from CMS. The federal Tax Relief and Health Care Act of 2006 codified the maximum provider tax rate at 6.0% of annual gross receipts. From January 1, 2008 through September 30, 2011 this cap will temporarily drop to 5.5%.

Background: Typically, revenues from a provider tax are matched with federal funds and then returned to nursing facilities through increased Medicaid payments. This mechanism provides a net increase to the nursing facility industry. Under this scenario, nursing facilities with large Medicaid populations benefit from higher reimbursement rates, while nursing facilities with low or nonexistent Medicaid populations pay the tax but receive little if any financial benefit.

There are about 250 nursing facilities in Maryland, including 32 CCRCs. In fiscal 2008, the State will spend about $993 million, or 19% of its Medicaid budget, on financing nursing home care. In fiscal 2003 (the most recent data available), 62% of nursing home patient days were funded by Medicaid, 22% by private pay, and 13% by Medicare.

Nursing Facility Assessments in Other States: Several states recently adopted provider assessments on nursing facilities, including New Jersey, North Carolina, Oregon, and Pennsylvania. With the exception of New Jersey, each of these states received CMS approval for assessments that specifically exempt CCRCs. The assessments in these states are as follows:

- New Jersey assesses 372 nursing facilities at a rate of $11.89 per non-Medicare resident day;
- North Carolina assesses 422 nursing facilities at a rate of $9.50 per non-Medicare resident day for facilities with up to 48,000 resident days per year and $3.00 per non-Medicare resident day for facilities with more than 48,000 resident days; and
- Oregon assesses 143 nursing facilities at a rate of $12.23 per resident day, with homes with more than 85% Medicaid residents exempt from the assessment.

Past Proposals for Nursing Facility Assessments in Maryland: The General Assembly has considered a nursing facility assessment three times in the past six years.

- Senate Bill 624 of 2002 proposed the establishment of a temporary nursing home provider assessment equal to 6% of annual gross receipts. Revenues were estimated at $91 million. The bill did not exempt CCRCs.

- The Budget Reconciliation and Financing Act of 2004 (Senate Bill 508/House Bill 869 of 2004) *as introduced* included a nursing facility assessment of $1,200 per licensed bed. Revenues were estimated at $34.7 million. CCRCs were exempt from the assessment. The assessment was not included in the enrolled version of the bill.

- Senate Bill 1012 of 2005 proposed a 2% assessment on the net operating revenue for all nursing facilities in the State. Revenues from the assessment were estimated to be $30 million in fiscal 2006.

State Revenues: Special fund revenues could increase by $15.9 million in fiscal 2008 from the quality assessment imposed on nursing facilities. This estimate assumes that CMS would approve and DHMH would implement the assessment during the second quarter of fiscal 2008, which begins October 1, 2007. Any assessment is limited to a maximum of 2% of nursing facility revenues in any given year and may not exceed the amount necessary to fully fund the nursing facility reimbursement system.

The information and assumptions used in calculating this estimate are stated below:

- approximately 188 nursing facilities would be subject to the assessment;
- it costs $26.5 million to fully fund the nursing facility reimbursement system all of fiscal 2008;
- it costs $16.1 million to increase Medicaid rates to offset the portion of the assessment attributable to Medicaid days;
- Medicaid only needs to collect half the total amount, or $21.3 million, because it would be permitted to receive a 50% federal match on expenditures; and
- only 75% of revenues ($15.9 million) would be collected in fiscal 2008.

Future year estimates reflect annualization and 4.5% Medicaid inflation for nursing facilities. However, the maximum amount of the nursing facility assessment in future years will be governed by nursing facility revenues and the amount of funds required to fully fund the nursing facility payment system in a given year.

State Expenditures: Medicaid expenditures would increase by $31.9 million (50% special funds, 50% federal funds) in fiscal 2008 to fully fund the nursing facility reimbursement system for the portion of the year during which the assessment would be implemented and increase Medicaid reimbursement rates to make the Medicaid nursing facility providers whole. Future year estimates reflect 4.5% Medicaid inflation.

The Governor's proposed Supplemental Budget No. 3 includes $29.8 million (50% special funds, 50% federal funds) to increase Medicaid payments to nursing facilities contingent upon the enactment of SB 101 or HB 130 of 2007 pertaining to a nursing facility quality assessment.

Beginning in fiscal 2009, to the extent DHMH follows the legislative intent expressed in the bill regarding distribution of assessment revenues, up to 25% of the assessment (an estimated $5.6 million) could be used as an incentive for nursing facilities to provide quality care. Funds would be distributed according to accountability measures developed by DHMH.

Additional Comments: For illustrative purposes only, the Department of Legislative Services estimated the impact of a full year $21.3 million assessment using nursing facility data from fiscal 2003. Under this scenario, 178 nursing facilities would incur a total net gain of $21.5 million, while 10 nursing facilities would incur a total net loss of about $239,000. Although not subject to the assessment under the bill, 14 CCRCs would incur a total net gain of $1.4 million due to increased reimbursement for Medicaid patients.

The information and assumptions used in calculating this estimate are stated below:

- there were 188 nursing facilities with 45 or more beds and 28 CCRCs;
- CCRCs would be exempt from the assessment, but eligible for increased Medicaid rates generated through the assessment;
- there were 7.4 million non-Medicare patient days;
- there were 5.6 million Medicaid patient days in non-CCRC facilities and 187,557 Medicaid patient days in CCRCs;
- the assessment imposed would be $2.90 per non-Medicare patient day; and
- revenues from the assessment ($21.3 million) would be combined with federal matching dollars and used to increase nursing facility rates by $42.6 million or $7.40 per Medicaid patient day.

Additional Information

Prior Introductions: SB 1012 of 2005 would have imposed an identical assessment on nursing facilities with 41 or more beds. No action was taken on this bill. HB 869 and SB 508 of 2004 (the Budget Reconciliation and Financing Act of 2004) included an assessment on nursing facilities, but the provision was later stricken from the bill. Similar bills, SB 624 and HB 1078, were introduced in 2002, but later withdrawn.

Cross File: SB 101 (The President, *et al.*) (By Request – Administration) – Budget and Taxation.

Information Source(s): Department of Health and Mental Hygiene; Maryland Health Care Commission, 2003 Maryland Long Term Care Survey; Department of Legislative Services

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Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510