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F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	1/29/18		
SPONSOR	Ortiz y Pino/Neville	**LAST UPDATED**	2/9/18	**HB**	
SHORT TITLE	State Health Care Quality Surcharge Act			**SB**	192/aSFC
				ANALYST	Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY18	**FY19**	**FY20**	**FY21**	**FY22**		
	$23,713.0	$23,713.0	$23,713.0		Recurring	Health Care Facility Fund and Disability Health Care Facility Fund
	$77,000.0	$77,000.0	$77,000.0		Recurring	Medicaid Match

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications			

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files
2017 SB 400/a

Responses Received From
Office of the Attorney General (NMAG)
Human Services Department (HSD)

SUMMARY

Synopsis of SFC amendment

Clarifies that an intermediate care facility to qualify for this treatment must have more than 60 beds and be licensed by the Department of Health.

Synopsis of Original Bill

(Provided by the Office of the Attorney General). Senate Bill 192 introduces new legislation to

increase Medicaid provider reimbursements for certain types of health care facilities and support quality improvement efforts of those facilities. The facilities affected are skilled nursing facilities (SNF) of any size, intermediate care facilities (ICF) with 60 beds or more and facilities licensed to provide food, shelter, and other healthcare treatment to individuals with intellectual disabilities (ICFIID) without limit on size.

SB192 imposes a daily surcharge on these facilities, calculated annually, for each day a facility bed is used but the primary payer is not Medicare Part A, Medicare Advantage, or a Medicare Special Needs Plan. The annual surcharge calculations would be done by the Human Services Department, which would be responsible for: (1) calculating the surcharge to be paid by each facility; (2) notifying the Tax and Revenue Department; and (3) notifying each facility.

The Human Services Department would additionally be required to set a uniform daily rate not exceeding the federal maximums and structure the rates so that the total estimated revenue will equal 6 percent of the facility's previous year's net revenue. However, if that calculated amount should exceed the federal maximums, the rate shall be reduced to a percentage that equals the maximum percentage allowed by the federal Social Security Act.

Within 30 days of the legislation taking effect (and quarterly thereafter), the affected facilities would be required to report to the Human Services Department the number of resident days provided by payers and their net revenue earned for the four most recent quarters.

Facilities whose approval or renewal of a state plan amendment or federal authorization would be jeopardized by the surcharge would not be subject to the surcharge. SB 192 provides an exemption for 65 percent of the surcharge for facilities with over 90,000 annual Medicaid-financed bed days.

SB192 creates a "health care facility fund" and "disability health care facility fund" in the state treasury to be administered by the Human Services Department, with excess annual funds not reverting to the general fund. The proposed legislation provides details of how the funds are required to be spent. Basically, the "health care facility fund" is available for appropriation to skilled nursing facilities or intermediate care facilities and the "disability health care facility fund" is available for appropriations to intermediate care facilities for individuals with intellectual disabilities.

SB192 also seeks to amend Section 7-1-2 NMSA 1978, to add the "Health Care Quality Surcharge Act" to the list of tax acts administered and enforced by the Tax Administration Act.

HSD would be permitted to retain 20 percent of the basic fee and use this retention, with the federal Medicaid match, to support other Medicaid expenditures.

The fees would be required to be paid to TRD by the 25th of the month following the end of the month when a non-Medicare bed was occupied.

HSD is required to apply for a Medicaid waiver, state plan amendment or other federal permission to implement the provisions of the Health Care Quality Act.

Section 12 of the bill repeals this surcharge effective January 1, 2022.

Section 13 provides a contingent effective date. If the bill passes both houses with the required supermajority, the bill's provisions become effective on the first day of the month following the day that the Secretary of the Human Services Department certifies that federal approval has been received.

Section 14 states that it is necessary for the public peace, health and safety that this act takes effect immediately.

FISCAL IMPLICATIONS

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations. This bill is somewhat unusual in that it imposes a calculated surcharge and then requires 80 percent or more of the collected fees to be remitted back to the nursing facilities. The collected fees are matched about 3 to 1 by the state's Medicaid match so the state gains substantial revenue in the exchange. However, LFC also discourages earmarking of revenues, and this is clear example of earmarking.

Based on the Annual Report for the Year Ended June 30, 2017 "Nursing Facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities", HSD identified total cost of $439.1 million for public and private nursing facilities and intermediate care facility for the individuals with intellectual disabilities. Without detail from each facility included, we assume that 10% of the cost was related to contracted allowances and bad debt to derive an estimated net revenue of $395.2 million. We then applied the maximum allowable of 6% to this net amount to generate the amounts used in this analysis.

The provider tax on SNFs, ICFs and ICFIIDs constitutes an expense to these facilities creating tax revenue to the state in the amount of $23.7 million per year. Providers would be reimbursed for the tax, and in the process receive increase Medicaid payments of $74.6 million. Consequently providers would receive a net revenue increase in the amount of $50.9 million per year (=$74.6 million – $23.7 million).

FY 2019 Fiscal Impact of SB 192 ($000s)

Description	General	Federal Financial Participation	Total Computable*
Administration/Other (20%)	4,743	7,114	11,856
Program (80%)	18,970	55,590	74,560
Total	**23,713**	**62,703**	**86,416**

* Based on a 6% rate for health care quality surcharge.

SIGNIFICANT ISSUES

As specified in Section 11, the imposition of a provider tax on SNFs, IFCs and ICFIIDs will require an approved state plan amendment or waiver from the Centers for Medicare and Medicaid (CMS). The approval of a state plan amendment or waiver of this type will be scrutinized by CMS.

Under current federal regulations, states may not use provider tax revenues for the state share of Medicaid spending unless the tax meets three requirements: it must be broad-based, uniformly imposed, and cannot hold providers harmless from the burden of the tax. Federal regulations create a safe harbor from the hold harmless test for taxes where collections are 6.0 percent or less of net patient revenues. Section 5 of the Bill provides an exemption for facilities with more than 90,000 annual Medicaid-financed bed days equal to sixty-five percent of the health care quality surcharge due in a reporting period. Additionally, other taxes in the Medicaid program are subject to the 6.0 percent threshold not solely this provider tax.

Further, SB192 references improved quality but does not specify the types of areas in which improvement are required.

- The following states currently have or have had provider fees on nursing facilities: AL, AR, CA, CO, CT, DC, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NH, MV, NJ, NY, NC, OH, OK, OR, PA, RI, TN, UT, VT, WA, WV, WI, and WY.

Other states have or are currently using similar legislation for hospitals, insurance agencies, or managed care organizations.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers paying the surcharge and subsequently receiving higher Medicaid reimbursement amounts. The legislature would have no means of determining whether the surcharge is meeting its purpose.

LFC notes that any additions to staff or budget should be carefully considered. It would be inefficient to use any portion of this Health Care Quality surcharge revenue for administrative purposes, if such uses jeopardized the federal match – estimated at approximately 77 percent of total Medicaid expenditures.

ADMINISTRATIVE IMPLICATIONS

HSD is allowed to use up to 20% of the money in the health care facility fund or disability health care facility fund to administer the Medicaid program for purposes other than specified in section 6 of the legislation. Additionally, SB 192 requires HSD to administer the fee by collecting data, analyzing data, calculating fees, applying for federal approval, promulgating rules, tracking revenue and other functions. These activities would require additional staff to fulfill such functions.

TECHNICAL ISSUES

The exemption language in Section 5 may require adjustment to the payment amounts referenced in other sections. This could adjust the net revenue amounts identified in the fiscal implications section.

OTHER SUBSTANTIVE ISSUES

One difficulty the legislature and executive have in adjusting policy with regard to healthcare delivery and funding in the state is the lack of timely and accurate data regarding utilization and revenues. On feature of this bill that is that HSD would receive comprehensive data on utilization and revenues by source for the entire nursing home sector.

If the bill is enacted, the state would take advantage of the federal Medicaid match. There is no downside risk. If CMS fails to grant the waiver, then there would be no fee and no enhanced Medicaid reimbursements. In that case, HSD would still have the results of a utilization and revenue survey for use in healthcare planning efforts.

TECHNICAL ISSUES

The Office of the Attorney General points out two technical weaknesses.

> Section 3(D), defining "intermediate care facility for individuals with intellectual disabilities," is unclear in two respects. Italics are added below to indicate the exact problem areas.
>
> First, the intended meaning of ". . . to provide food, shelter, health or rehabilitative and active treatment. . ." is not completely understood.
>
> Second, in the same definition, ". . . for individuals with intellectual disabilities or persons with related conditions," is both vague and broad, leaving the statute open to very broad interpretation and possible unintended interpretations.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The State may lose the opportunity to take advantage of loophole in the federal Medicaid program.

LG/sb/al