House
Legislative
Analysis
Section

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NURSING HOMES: CRIMINAL BACKGROUND CHECKS ON EMPLOYEES & MEDICAID ASSESSMENT FEE

House Bill 4057 as enrolled
Public Act 303 of 2002
Sponsor: Rep. Patricia Birkholz

House Committee: Senior Health, Security and Retirement
Senate Committee: Health Policy

Third Analysis (9-6-02)

THE APPARENT PROBLEM:

In recent years, the media has reported numerous stories involving residents of nursing homes suffering abuse at the hands of employees. Abuse can range from neglect to theft of personal items, physical and sexual assault, and even murder. Such treatment at the hands of care givers and other staff is all the more heinous considering the vulnerable nature of nursing home residents, many of whom suffer from diseases and disabilities that leave them unable to protect or defend themselves.

Several incidents in Michigan over the last few years underscore the potential harm to residents. Several years ago, a nurse aide in a Detroit nursing home slapped a resident, cutting the resident's face and requiring the resident to undergo emergency treatment. A criminal background check conducted as part of the investigation revealed that the aide had prior felony convictions that included second degree murder, felony armed assault with intent to rob, and assault with a deadly weapon. In another case, an adult foster care home worker beat a resident with a disability so badly that the man's face was severely bruised and swollen and he required hospitalization. The worker was fired after an investigation had been conducted. Later, this person was hired by a different service provider and was subsequently involved in another abusive incident with a resident of a group home.

Incidents such as these have led many to believe that if criminal history checks were done on employees of nursing homes and group homes that care for the elderly and disabled, that persons with a history of abuse could be screened out during the application process. Under federal law, states are required to maintain a registry that tracks competency evaluated nurse aides (CENAs), but only for actions that occur in a nursing home, and that were reported to the Department of Consumer and Industry Services. There is no such registry for other positions in long-term care facilities. Under current state and federal law, nursing homes and other health facilities and agencies are not required to conduct criminal history checks on potential employees, though according to members of the nursing home industry, the majority do. It is believed that requiring criminal history checks on new employees in nursing homes, county medical care facilities, and homes for the aged would be one way to increase protection for the elderly and disabled.

In an unrelated matter, legislation has been requested to address another issue affecting the delivery of long-term care services. Reportedly, about 70 percent of nursing home residents are Medicaid recipients. Payment for their care is provided by the Medicaid program, which is jointly funded by state appropriations and federal grant money. In recent years, as the cost to provide medical services has soared, Medicaid reimbursement rates have remained about the same. This has resulted in a financial hardship for nursing homes, homes for the aged, and hospital long-term care units that provide care to Medicaid patients, and even more so for those facilities who serve a disproportionately higher number of public-pay patients. Reportedly, some recent closures of nursing homes were due in part to revenue losses from insufficient Medicaid reimbursement. Unfortunately, due to the current economic climate and budgetary shortfalls, the state is unable to increase its share of Medicaid funding for long-term care services so that reimbursement rates could be increased.

However, federal law allows a state, with certain restrictions, to levy an assessment fee on health providers so as to generate increased revenue, which can then be used to qualify for more federal matching dollars. The revenue generated from the assessment fee plus the additional federal matching dollars are then used to increase a state's Medicaid reimbursement rate. Currently, at least 26 other states use some sort of provider assessment to fund their reimbursement increases. Federal law, though, requires such a state program to be in statute.

THE CONTENT OF THE BILL:

House Bill 4057 would amend Part 201 of Article 17 of the Public Health Code (MCL 333.20173) to require background checks on new employees of nursing homes, county medical care facilities, and homes for the aged. Under the bill, these facilities could not employ, independently contract with, or grant clinical privileges to an individual who would be providing direct services to residents after the bill's effective date if he or she had been convicted of either a felony or an attempt or conspiracy to commit a felony within the previous fifteen years, or a misdemeanor that involved abuse, neglect, assault, battery, or criminal sexual conduct or fraud or theft against a vulnerable adult (as defined under the Michigan Penal Code) within the previous ten years. Further, a facility would be prohibited from employing or contracting with an individual without first running a criminal history check on the person. However, these provisions would not apply to individuals who were employed by, under contract to, or granted clinical privileges at a facility on the effective date of the bill.

A person who had applied for employment, contract services, or clinical privileges in a nursing home, county medical care facility, or home for the aged and had received a good faith offer of employment would have to give written consent, along with acceptable identification, for the Department of State Police (DSP) to conduct a criminal history check. If a criminal history check had been performed on the applicant within the previous 24 months, a copy of the criminal history check could be used in lieu of obtaining written consent and requesting a new check. However, if the person were using a prior criminal history check, the facility would have to receive a copy of the previous criminal history check directly from the previous employer.

As a condition of employment, an individual would have to sign a written statement that he or she had been a resident of Michigan for three or more years preceding the good faith offer of employment or independent contract. After receiving the signed consent form from the applicant, the facility would have to request the DSP to conduct a criminal history check on the applicant. (For individuals with three or more years of residency, the criminal check would be limited to a name check of the state Law Enforcement Information Network.) The DSP would have to provide the facility with a report containing any criminal history record information on the applicant maintained by the department. The facility would have to bear any cost of the criminal history check, and would be prohibited from seeking reimbursement from the applicant.

If the individual had resided in Michigan less than three years preceding the good faith offer of employment, the individual would have to supply the DSP with two sets of fingerprints. The facility would have to request the DSP to conduct a criminal history check of information maintained by state and then forward the fingerprints to the Federal Bureau of Investigation (FBI) to do a national criminal history check. The DSP would have to provide the results of its criminal history check to the facility and provide the results of the FBI determination to the Department of Consumer and Industry Services (CIS). If the requesting facility was not a governmental agency, CIS would have to notify the facility in writing of the type of crime disclosed on the FBI report without disclosing the details of the crime. The facility requesting the criminal history check would be responsible for paying any fees for the FBI check and could not pass this cost on to the applicant.

A nursing home, county medical care facility, or home for the aged could employ or contract with an applicant as a conditional employee before receiving the results of the criminal history check as long as the criminal history check had been requested and the applicant signed a statement that he or she had not been convicted of a felony or the listed misdemeanor offenses; that he or she agreed that if the criminal history check did not confirm the applicant's statements, that his or her employment would be terminated; and that providing such incorrect information was a good cause for termination. If the criminal history report did not confirm a conditionally-employed individual's signed statement, the facility would have to terminate the employment. Knowingly providing false information would constitute a misdemeanor punishable by 90 days imprisonment and a fine of up to $500, or both. Upon the effective date of the bill, CIS would have to develop and distribute a model form for the statement of prior criminal convictions at no cost to facilities.

Information provided on a criminal history record could only be used for evaluating an applicant's qualifications, and a facility would be prohibited from disclosing information to a person who was not directly involved in evaluating the applicant's qualifications. Upon written request from a facility that was considering employing, independently contracting with, or granting clinical privileges to an individual, a facility that has already obtained criminal history record information under this section on that individual would have to share the information with the requesting facility. A facility would have no liability in connection with a background check or the release of such information except for a knowing or intentional release of false information.

As a condition of continued employment, each employee or independent contractor would have to agree in writing to report to the nursing home, county medical care facility or home for the aged immediately upon being arrested for or convicted of one or more of the criminal offenses listed above.

The bill would define "independent contract" as a contract that was entered into by a health facility or agency with an individual who provided the contracted services independently. It would also apply to a contract entered into by one of the above facilities with an organization or agency that employed or contracted with an individual after complying with the bill's requirement to provide the contracted services to the facility on behalf of the organization or agency. "Health facility or agency" is defined in the Public Health Code (MCL 333.20106).

Medicaid assessment fee. Beginning on the bill's effective date (May 10, 2002), and continuing until September 30, 2007, a quality assurance assessment fee for nongovernmentally owned nursing homes and hospital long-term care units would be assessed. (As of October 1, 2007, the fee would no longer be assessed or collected, nor would federal matching funds be applied for.) This fee along with all federal matching funds attributed to the fee would be used to maintain the increased per diem Medicaid reimbursement rate increases as provided in the bill. Only licensed nursing homes and hospital long-term care units assessed the fee and which participate in the Medicaid program would be eligible for the increased per diem Medicaid reimbursement rates.

The assessment fee would be an amount that resulted in not more than a seven percent increase in aggregate Medicaid nursing home and hospital long-term care unit payment rates, net of assessments, above the rates in effect on April 1, 2002. The fee would be based on the number of licensed nursing home beds and the number of licensed hospital long-term care unit beds in existence on July 1 of each year, and would be assessed as of the bill's effective date for the first year and subsequently on October 1 of each following year. The fee would be payable on a quarterly basis, with the first payment due 90 days after the date the fee was assessed.

Once implemented, the Department of Community Health (DCH) would have to increase the per diem nursing home Medicaid reimbursement rates for the balance of that year, and would have to maintain the payment increase financed by the assessment fee for subsequent years. The bill's provisions regarding the assessment fee and increased reimbursement payments would all have to be implemented in a manner that complied with federal requirements so that the fee qualified for federal matching funds. In addition, both the DCH and the Department of Consumer and Industry Services would be prohibited from implementing the provisions regarding the assessment fee in a manner that conflicted with 42 U.S.C. 1396b(w). (Public Law 102-234 in 1991 added subsection w in response to the number of states implementing "provider donation" and "provider taxation" programs as a way to claim more federal Medicaid dollars. According to information supplied by the Citizens Research Council of Michigan, key provisions of the federal legislation require that a state's program be broad based, be uniform in application, contain a dollar limit, and not contain a "hold harmless" provision.)

A nursing home or hospital long-term care unit that failed to pay the assessment required by the bill could be assessed a penalty by the DCH of five percent of the assessment fee for each month that the assessment and the penalty were not paid, up to a maximum of 50 percent of the assessment fee. Past due amounts consistent with Section 13 of Public Act 122 of 1941 could be referred to the Department of Treasury.

The Medicaid Nursing Home Quality Assurance Assessment Fund would be established in the state treasury. Revenue raised through the assessment fee would have to be deposited into the fund. The assessment fee would be prorated on a quarterly basis for any licensed beds added to or subtracted from a nursing home or hospital long-term care unit since the immediately preceding July 1. An adjusted payment would be due on the next quarterly installment due date. Further, in each fiscal year governed by the bill, Medicaid reimbursement rates could not be reduced below the Medicaid reimbursement rates in effect on

April 1, 2002 as a direct result of the collection of the assessment fee.

The bill would also appropriate approximately $1.47 billion to the DCH for the fiscal year ending September 30, 2003 to be used for long-term care services. Approximately $8 million would come from federal revenues, $44.8 million from the Medicaid Quality Assurance Assessment Fee, $8.4 million from local revenues, and $602 million from the state's general fund.

BACKGROUND INFORMATION:

House Bill 4495 introduced in the 1997-1998 legislative session and House Bill 4727 introduced in the 1999-2000 legislative session, which were similar to House Bill 4057, were passed by the House.

Criminal history checks. Currently, there are several mechanisms for conducting a criminal history check.

* LEIN. The Law Enforcement Information Network can be used by law enforcement agencies and the state police to run a name search for convictions in the state of Michigan. Only the state police can access the LEIN for non-criminal justice purposes, though recently the Department of State Police created a web browser that allows registered employers to conduct name checks on-line. A $10 fee is charged for name searches for a civil purpose, such as for employment purposes, but the fee is waived for nonprofit, charitable entities meeting the criteria for designation as a 501(c)(3) charitable organization under IRS rules. If a person uses a false name or birth date, the information provided by a LEIN name check would be inaccurate.

* NCIC. The National Crime Information Center maintains a national database of convictions. Terminals linked to the database can be set up in law enforcement agencies such as local police stations and prosecutor's offices. A national name search can be conducted in a matter of minutes, but is only available for criminal justice purposes. As with the state LEIN system, an NCIC search cannot guarantee an accurate identification, especially if an alias is used. According to staff at the Department of State Police, recent Federal Bureau of Investigation (FBI) statistics report that 11.7 percent of name checks reflected the use of a different name, resulting in approximately 70,000 false hits a year.

* Fingerprint checks. The only way to accurately verify a person's identity, and therefore establish his or her criminal background, is to do a fingerprint check at the national level. Only the FBI can process fingerprints and conduct such a search (several states retain their own database of fingerprints and those states will run a search and report back to the FBI). Under current state law, only the Criminal Justice Information Center within the Department of State Police can submit fingerprints to the FBI for non-criminal justice purposes and receive the FBI report. Upon a request for a national fingerprint search, the department first runs a fingerprint check for Michigan convictions then transmits the report and fingerprints electronically to the FBI. According to a representative of the FBI, there is a 24-hour turn around on criminal background checks for civil purposes (two hours for criminal investigations) if the fingerprints are transmitted electronically, with a few extra days needed to search the records maintained by individual states. The FBI charges $24 for each background check done for a civil purpose (checks for criminal cases are free). The entire process for a background check for civil purposes takes between two and three weeks. The state police assesses a fee of $30 in addition to the FBI fee, bringing the cost of a background check for a civil purpose to $54.

The National Crime Prevention and Privacy Compact. According to an article in State Legislatures magazine dated May, 1999, the compact, which went into effect in 2000, binds the FBI and ratifying states to participate in the civil access program of the Interstate Identification Index (a decentralized system that handles interstate and federal-state criminal record searches), re-authorizes use by current users of FBI file records, and requires participating states to make all unsealed criminal history records available in response to authorized non-criminal justice requests. Civil access to the system requires fingerprints, and dissemination of information on the records is governed by the laws of the receiving state. An advisory council of federal and state officials and others representing the interests of system users has been established to promulgate rules and establish operating policies for civil uses of the Interstate Identification Index, and resolve disputes between states and the FBI. To date, Michigan had not ratified the compact, but is one of the 39 states that participates in the system.

Medicaid Quality Assessment Fee Program. Among many things, Public Act 304 of 2002 (enrolled Senate Bill 748) allowed an assessment fee to be levied against health maintenance organizations that have contracts with the Department of Community Health to deliver services to Medicaid recipients. With the revenue generated by the assessment fee and the increased federal matching dollars, the bill allows for a five percent increase in Medicaid payments to the HMOs.

House Bill 5103, which was ordered enrolled, would have created a similar program to increase Medicaid reimbursement rates for hospitals, but it was vetoed by the governor. In his letter explaining his veto of the bill, Governor Engler linked the quality assurance assessment program with the tobacco settlement revenue ballot proposal. The ballot proposal gives voters the choice of approving or rejecting a plan to distribute 90 percent of the revenue to hospitals, nursing homes, and other health organizations throughout the state and the remaining 10 percent to the state's general fund. Speaking of the quality assurance assessment program and the tobacco ballot proposal, the governor wrote "[t]he state can afford one, but not both. The choice is straightforward. One program offers $143 [million] in additional Medicaid dollars into the system. The other, the promise of a bitter electoral battle for the hope of more funding in the future. I have been very clear throughout the entire legislative process that I would not support a hospital assessment if the ballot proposal moved forward."

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would have a minimal fiscal impact on the Department of State Police to conduct the criminal history background checks. The background checks have fees attached to them ($15 for a name check, $30 for a state fingerprint check, and $24 for a federal fingerprint check, which would be payable to the department to cover its actual cost of providing the criminal history background checks.

In regard to the quality assurance assessment fee, the SFA reports that if the fee were considered an "allowable" Medicaid cost, the state would, in the next 15 months or so, end up paying around $14 million GF/GP to the nursing homes as the fee would be rolled into the cost base of those facilities. There could be other additional costs to the state, but they are indeterminate at this time. (5-1-02)

ARGUMENTS:

For:

The Michigan Nurse Aide Registry only tracks competency evaluated nurse aides (CENAs), and then only for actions that occur in a nursing home. A violent crime committed outside a nursing home would not appear on the registry, nor would the name of a person who abused or stole from a resident but was not yet a CENA, as departmental policy allows an aide to work for four months while undergoing the training and testing to become a CENA. Currently, agencies can request a name check from the Department of State Police, but not all health agency employers do so. The bill would require that all licensed nursing homes, county medical care facilities, and homes for the aged in the state request the Michigan State Police to run a criminal history check on new employees. For those with less than three years of residency in the state, a national fingerprint check would be conducted. Since it is not uncommon for those who work in the nursing home industry to be transient and to move from state to state, the bill would add an additional level of protection from people who may have committed an abusive act in one state and now are seeking employment in Michigan. Simply put, workers with past histories of abusive or violent behavior who pose a risk to the health and safety of patients and residents can be screened out before abuses can occur.

Against:

Requiring criminal background checks on new employees is a good beginning, but checks should also be done on those currently working in health facilities that have direct contact with patients and residents. To do less would continue to expose patients and residents to potentially dangerous workers. Since the intent of the legislation is to take a proactive step toward protecting a vulnerable population, checking employees with less than 15 years of service (the bill establishes a 15-year look-back for felony offenses) should be considered.

Further, all criminal history checks should require FBI checks with fingerprints. A fingerprint check is the only way to verify an individual's true identity and then to check for a history of violent or abusive behaviors. Statistics compiled by the FBI reveal that a significant number of false hits occur with name-based checks. These include false positives, meaning that an innocent person may be denied employment or forced to prove his or her innocence, and false negatives, meaning that a person is using an alias to disguise his or her identity.

In addition, according to testimony given by David Loesch of the FBI before a Congressional committee in 2000, only FBI examiners and law enforcement personnel "have the training and experience to evaluate name-based background checks correctly, but the same is generally not true of others who would seek to use name-based checks for non-criminal justice purposes." Yet, in the interest of "efficiency", the state police have now instituted an on-line name-based criminal history system whereby persons who lack criminal justice

training can conduct their own criminal history checks on prospective employees!

Response:

Similar bills in previous legislative sessions would have required all employees, current and new hires, to undergo criminal background checks. However, since a background check on the national level for non-criminal justice purposes requires the state and FBI to do a fingerprint check at the rate of approximately $54 per person, the cost was considered to be prohibitive considering the large number of people currently working in nursing homes, county medical care facilities and homes for the aged. Many of these facilities are already struggling to stay afloat financially as health care costs escalate at the same time that insurance, Medicaid, and Medicare reimbursements are being decreased. Many facilities do not feel that they could meet the cost of fingerprint checks for all employees. Some facilities could be forced out of business if they were required to conduct background checks on all employees or if fingerprint checks had to be done on all new employees. This could leave many frail and elderly people with no place to go.

Besides, some of the problems could be mitigated if facility administrators were more assertive in taking appropriate disciplinary measures and following existing law with regard to reporting incidents to the Department of Consumer and Industry Services. Reportedly, some homes have been hesitant to report incidents or institute disciplinary actions out of a fear of being sued by disgruntled employees. Tighter adherence to current laws, coupled with greater scrutiny in supervising staff or investigating suspicious bruises on residents, could minimize harm to the residents and screen out problem workers.

For:

The bill would prohibit nursing homes, county medical care facilities and homes for the aged from employing, contracting with, or granting clinical privileges to new workers with felony convictions or certain misdemeanor offenses involving theft or physical or sexual abuse. However, since all people must be given a chance to demonstrate that they have been rehabilitated, and many feel that a person's debt to society has been paid by serving his or her time in prison, the bills include a time limit to the restriction on employment.

Response:

The observation has been made through the years that a person could walk out of prison today and be working in a nursing home tomorrow, and therefore a screening mechanism should be established. The bill would not necessarily prevent this scenario from continuing to happen. Though the bill specifies that a person convicted of a felony or certain misdemeanor offenses could not be newly hired for a period of 15 years and 10 years after the conviction date, respectively, this time frame coincides with current sentencing guidelines for a number of serious, assaultive crimes. Therefore, a person who spent 15 years in prison for murder or attempted murder, or crimes involving sexual assaults, could still walk out of prison today and be working with a vulnerable population tomorrow as long as he or she had served one day longer than the bill's time frame.

Since certain crimes have a high recidivism rate, the bill may not provide sufficient time to demonstrate whether or not a person has been rehabilitated. Rather than setting a time frame in years after a conviction, a better approach would be to establish or incorporate a time period in which the person did not re-offend. In that way, a person convicted of a non-assaultive felony who only served a year in prison would not have to wait 14 years before seeking a career in the health industry, but would have to demonstrate for a set period of time that he or she does not present a danger to others.

Against:

Several weaknesses have been identified in the bill. For instance, the bill would require background checks to be done on employees who regularly provide direct services to patients. However, this terminology has not been defined. Some interpret it to mean only personnel who provide clinical services, such as physical therapists, nurses, nurse aides, and so on. Others may interpret it to include those who work in housekeeping, food services, and other areas if the employee has regular contact with patients. The broader interpretation would provide greater safety to patients and would better fit the implied intent of the legislation, which is to protect a vulnerable population from exposure to dangerous people who have been hired to provide care for them. Care comes in many forms and is broader than just medical care.

Further, even if a facility requested that the state police run a fingerprint check, the FBI is restricted by federal law as to what types of information can be released and to whom. Yet, the bill requires the Department of Consumer and Industry to release information on the types of crime to the requesting facilities. Complicating the issue further is the fact that what constitutes a misdemeanor for some offenses in Michigan could be a felony in another state and vice versa. Only a person with the training and expertise to properly decipher an FBI report and interpret information according to the bills' requirements should do so. However, under the

bill as written, CIS staff would be expected to correctly interpret the FBI reports.

In addition, if a facility had criminal history record information on a person, and that person applied for employment or clinical privileges at another facility, the bill requires the first facility to release the information from that criminal history check to the other facility. Questions have been raised about the legality and advisability of requiring one agency or facility to release highly confidential records to another facility upon request. These issues may require further legislative scrutiny.

Against:

Though the bill specifies that some persons who independently contract with nursing homes, county medical care facilities, and homes for the aged must undergo background checks, it is not clear whether indirect employees, such as those placed by temporary employment agencies that a facility may contract with, would come under the bill's requirements. Therefore, a social worker or physical therapist under contract to a facility may have to undergo a criminal history check, but a temporary worker in a nursing home caring directly for residents as a competency evaluated nurse aide may not come under the bill's regulations. In the case of the nursing home worker who sexually assaulted the mentally incapacitated resident previously mentioned, the worker was from a "temp" agency.

Response:

This was a concern with past versions of the legislation. However, the bill contains a definition of "independent contract" that addresses this issue. Under the bill, employment agencies providing facilities with "temp" workers would also have to comply with the requirement to conduct background checks on new employees.

Against:

According to industry members, the bill poses additional questions regarding criminal background checks for doctors; therapists; hospice staff; ancillary providers such as podiatry, dental, etc.; and others who may fall within the scope of those having "clinical privileges". Nursing homes have a large turnover of certified nurse aides, sometimes as high as one quarter to one third. The bill would require that nursing homes bear the cost of the criminal check. With name checks costing $10 per person and fingerprint checks (for persons with less than three years of state residency) running $54 per person, just paying for the criminal history background checks for CENAs could pose a hardship for many financially strapped nursing homes. Though some nursing homes may qualify for free state name checks [those meeting federal criteria for designation as a 501(c)(3) charitable organization], all would have to pay for the fingerprint checks. To also have to pay for background checks on physicians and other health professionals who enjoy clinical privileges at a nursing home could add an additional financial burden.

It is also not clear in the bill what would suffice as "proof" of residency, or who would be responsible to pay for obtaining two sets of fingerprints. Though the bill says that the applicant must supply the Department of State Police with two sets of fingerprints, it also requires that the nursing home bear the burden for the cost of the criminal background check. People can be fingerprinted at their local police departments, but many departments charge a fee. If nursing homes also had to pay this fee, on top of the $54 fee for the state police and FBI to run the fingerprints, it could be burdensome, indeed.

For:

It is estimated that this year alone Medicaid will serve approximately 1.2 million Michigan residents at a cost of over $5 million, many of who will require long-term care in a nursing home or hospital long-term care unit. About 70 percent of patients in nursing homes are Medicaid recipients, resulting in some nursing homes having a disproportionately large share of Medicaid patients. The primary problem is not that Medicaid recipients may need more specialized care than other patients, but that providers are reimbursed at a lower level for Medicaid patients than if they delivered the same level of care and services for a private pay patient. Simply put, Medicaid reimbursement rates have not kept up with increasing costs for providing medical services.

For more than a decade, many other states have implemented programs whereby providers are assessed a "tax" or fee. Revenue from the assessment is then added to a state's contribution to its Medicaid program. This results in a higher state appropriation for the Medicaid program. In turn, this higher appropriation enables the state to receive a greater amount of federal matching funds. The state then is able to utilize the additional federal match dollars to increase Medicaid reimbursement rates. Federal guidelines establish criteria by which such a practice is allowable.

In light of the recent economic downturn, which has resulted in a budget shortfall, it has been impossible for the state to raise Medicaid reimbursement rates.

Unfortunately, this has resulted in a financial hardship for many nursing homes, some of which have been forced to close. Since assessing a provider fee is allowed, with some restrictions, by federal law, many feel that Michigan should join the other 26 states which use such a program in order to generate additional dollars so to increase the Medicaid reimbursement rate for nursing homes and hospital long-term care units.

The bill would do just that. Under the bill, nursing homes and hospitals with long-term care units would be assessed an annual fee based on the number of beds in the facility. Each nursing home and long-term care unit would contribute about $2.77 per bed daily (about $1,000 annually per bed). It is expected that the assessment fee will generate about $44.7 million annually; this revenue in turn will earn $55.6 million in new federal revenue. The increase in federal matching dollars would then be used to fund a seven percent increase in Medicaid reimbursement rates for eligible homes and hospital long-term care units. The assessment program would sunset in 2007, at the close of the 2006 fiscal year. Though not a total solution to the financial challenges of providing long-term care to lower-income residents, the assessment fee program is a reasonable approach to providing some short-term relief during a difficult economic period.

Against:

The bill is not the win-win solution for increasing Medicaid reimbursement rates that, on the surface, it would appear to be. The bill requires that all nursing homes and hospital long-term care units pay a per-day fee for each bed in the facility. The state would then increase the Medicaid reimbursement rate by seven percent over current levels. In theory, the long-term care provider would receive more in increased reimbursement rates than what was paid out for the bed assessment fee. Though it does appear that the majority of the state's 400+ nursing homes will indeed come out ahead under this proposal, there will be losers – for not all nursing homes provide services to Medicaid recipients. According to information supplied by the House Fiscal Agency, 45 nursing homes would experience a net loss totaling approximately $2.8 million. In essence, facilities with only private pay patients would be subsidizing the increased Medicaid payments to providers serving Medicaid recipients. Most likely, this increased cost would be passed along to private pay residents in the form of higher rates. Some in the nursing home industry feel that taxing all providers to increase reimbursement for some is unfairly putting the burden on private pay residents of nursing homes rather than on society as a whole.

Response:

Yes, it is true that the revenue generated by the provider tax will only be paid out to those facilities who serve Medicaid patients; therefore some facilities with only private pay residents will not see a benefit from the assessment fee program. However, this was unavoidable, as federal law requires such a program to be broad based – meaning that the assessment fee must be sector-wide. There was no way to legally levy the assessment on only those facilities providing services to Medicaid recipients. However, the overwhelming majority of nursing homes do serve Medicaid patients, and for some facilities, Medicaid patients make up the majority of their patient populations. Those homes in particular have been struggling to survive and provide quality care under woefully inadequate Medicaid reimbursement rates. The bill therefore represents the best action that could take place at this time. In expectation that the economy will recover and state appropriations to fund Medicaid can increase in the future, the bill is scheduled to sunset at the close of the 2006 fiscal year.

Analyst: S. Stutzky

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.