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SFA BILL ANALYSIS

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Senate Bill 1323 (as enrolled) **PUBLIC ACT 562 of 2002**
Sponsor: Senator Loren Bennett
Senate Committee: Families, Mental Health and Human Services
House Committee: Family and Children Services

Date Completed: 4-18-03

CONTENT

The bill amended the Public Health Code to do all of the following:

-- End certain restrictions pertaining to the disclosure of information included in fetal death reports effective June 1, 2003, and require that fetal death reports filed on or after that date be included in the State's vital records system.
-- Require the Department of Community Health (DCH), with information provided in a fetal death report, to create a certificate of stillbirth.
-- Specify that vital records and information in them are not subject to the Freedom of Information Act.
-- Require the race of the woman to be included in the report that must be transmitted to the DCH by a physician who performs an abortion.
-- Provide for the implementation of a quality assurance assessment (QAA) fee on hospitals, beginning on the bill's effective date.
-- Specify the purposes for which a QAA fee and all Federal matching funds attributed to it are to be used, including Medicaid reimbursement rate increases.
-- Allow the DCH to assess a penalty if a hospital fails to pay a quality assurance assessment.
-- Establish the Hospital Quality Assurance Assessment Fund in the State treasury for the deposit of QAA fee revenue.
-- Make an appropriation to the DCH for fiscal year (FY) 2002-03.
-- Prohibit the collection of the QAA fee after September 30, 2004, or if the fee is not eligible for Federal matching funds.

The bill took effect on October 1, 2002.

Fetal Death Reports & Certificate of Stillbirth

Under the Code, the reporting form for a fetal death may not contain the name of the parents of the fetus, common identifiers such as Social Security or driver's license numbers, or other information that would make it possible to identify the parents. The Code also prohibits a State agency from comparing data in an information system file with data in another computer system that would identify a woman or father involved in a fetal death; and prohibits the maintenance of statistical information that may reveal the identity of the parents involved in a fetal death. Under the bill, those provisions will not apply after June 1, 2003.

The Code also provides that fetal death reports are statistical reports to be used only for medical and health purposes. The reports may not be incorporated into the permanent official records of the system of vital statistics. The DCH is prohibited from disclosing the reports to any person outside the Department in any manner that would permit the identification of the parents. Under the bill, those provisions apply only to reports filed before June 1, 2003.

The bill provides that fetal death reports filed on or after June 1, 2003, are permanent vital records documents and must be incorporated into the State's system of vital statistics. Access to a fetal death report or information contained in it will be the same as access to a live birth record under the Code.

The bill requires the DCH, with information provided to it in a fetal death report, to create a certificate of stillbirth. A certificate of

stillbirth must conform as nearly as possible to recognized national standardized forms and include at least all of the following information:

-- The name of the fetus, if it was named by the parent or parents.
-- The number of weeks of gestation completed.
-- The date of delivery and weight at the time of delivery.
-- The name of the parent or parents.
-- The name of the health facility in which the fetus was delivered or the name of the health professional in attendance, if delivery occurred outside of a health facility.

QAA Fee

The bill requires the DCH to assess a quality assurance assessment fee for hospitals at a rate that generates funds up to the maximum allowable under Federal matching requirements, after consideration for the amounts used to maintain the Medicaid reimbursement rate increases in the bill and the amount appropriated by the bill to the General Fund. The bill specifies that the quality assurance dedication is an earmarked assessment fee collected under this provision. The fee and all Federal matching funds attributed to it must be used only for the purposes and under the circumstances described below.

Part of the QAA fee must be used to maintain the increased Medicaid reimbursement rate increases provided for under the bill. A portion of the funds collected from the QAA fee may be used to offset any reduction to existing intergovernmental transfer programs with public hospitals that might result from implementation of the enhanced Medicaid payments financed by the QAA fee. Any portion of the funds collected from the QAA fee reduced because of existing intergovernmental transfer programs must be used to finance Medicaid hospital appropriations.

The QAA fee must be assessed on all net patient revenue, before deduction of expenses, less Medicare net revenue, as reported in the most recently available Medicare cost report, and is payable on a quarterly basis. (As used in this provision, "Medicare net revenue" includes Medicare payments and amounts collected for coinsurance and deductibles.)

Upon implementation of the QAA fee, the DCH was required to increase the hospital Medicaid reimbursement rates for the balance of the year. For each subsequent year in which the QAA fee is assessed and collected, the DCH must maintain the hospital Medicaid reimbursement rate increase financed by the QAA fees.

The DCH must implement the QAA fee provisions in a manner that complies with Federal requirements necessary to assure that the QAA fee qualifies for Federal matching funds.

If a hospital fails to pay the required assessment, the DCH may assess the hospital a penalty of 5% of the assessment for each month that the assessment and penalty are not paid, up to a maximum of 50% of the assessment. The DCH also may refer collection of past due amounts to the Department of Treasury.

The bill created the Hospital Quality Assurance Assessment Fund in the State treasury. The DCH must deposit revenue raised through the QAA fee with the State Treasurer, for deposit in the Fund.

In each fiscal year governed by the bill, the QAA fee may be collected and spent only if Medicaid hospital inpatient DRG and outpatient reimbursement rates and disproportionate share hospital and graduate medical education payments are not below the level of rates and payments in effect on April 1, 2002, as a direct result of the QAA fee.

The bill appropriated $149,200,000 to the DCH for hospital services and therapy for fiscal year 2002-03. Of that amount, $82,686,800 was appropriated from Federal revenues and $66,513,500 was appropriated from the Medicaid Quality Assurance Assessment Fund. In FY 2002-03, $18,900,000 of the QAA fee must be deposited into the General Fund.

The QAA fee may no longer be assessed or collected after September 30, 2004, or in the event that the fee is not eligible for Federal matching funds. Any portion of the QAA collected from a hospital that is not eligible for

Federal matching funds must be returned to the hospital.

MCL 333.2803 et al.

BACKGROUND

System of Vital Statistics

Under the Code, "system of vital statistics" means the collection, certification, compilation, amendment, coordination, and preservation of vital records, including the tabulation, analysis, and publication of vital statistics. "Vital statistics" means data derived from vital records and related reports. "Vital record" means a certificate or registration of birth, death, marriage, or divorce; an acknowledgment of parentage; or related data. The State Registrar is an official appointed by the DCH Director, and is the custodian of the system of vital statistics.

The Code regulates the availability of vital records in the system of vital statistics. A certified copy of a live birth record, for instance, must be issued, upon written request and payment of a fee, to one of the following:

-- The individual who is the subject of the record.
-- A parent named in the birth record.
-- An heir, a legal representative, or a legal guardian of the individual who is the subject of the live birth record.
-- A court of competent jurisdiction.

If a live birth record is 110 or more years old, a certified copy of the record must be issued to any person who applies for the record.

In addition, the Code allows the DCH to furnish copies or data from the system of vital statistics to the Federal agency responsible for national vital statistics, if that agency shares in the cost of collecting, processing, and transmitting the data, and if the data are not used for other than statistical purposes unless authorized by the State Registrar. The DCH also may furnish copies or data from the system of vital statistics to Federal, State, local, and other public or private agencies for statistical or administrative purposes and to local health agencies for health planning and program activities.

QAA Fee

Nursing Homes & Long-Term Care Units. Public Act 303 of 2002 (House Bill 4057), which took effect on May 10, 2002, amended the Public Health Code to provide for a quality assurance assessment fee on nongovernmentally owned nursing homes and hospital long-term care units. The fee, along with all Federal matching funds attributed to it, is used to maintain the increased per diem Medicaid reimbursement rate increases provided for in Public Act 303. Only licensed nursing homes and hospital long-term care units that are assessed the fee and participate in the Medicaid program are eligible for the increased per diem Medicaid reimbursement rates. The DCH may not assess or collect the fee, or apply for matching Federal funds, as of October 1, 2007.

A nursing home or hospital long-term care unit that fails to pay the assessment required by Public Act 303 may be assessed a penalty of 5% for each month that the assessment and the penalty are not paid, up to a maximum of 50% of the QAA fee.

Public Act 303 also created the Medicaid Nursing Home Quality Assurance Assessment Fund in the State treasury, for the deposit of revenue from the nursing home QAA fees. For FY 2002-03, the Act appropriated $1,469,003,900 for long-term care services, of which $814,122,200 was appropriated from Federal revenues, $44,829,000 from the Medicaid Quality Assurance Assessment Fund, $8,445,100 from local revenues, and $601,607,600 from State General Fund/General Purpose (GF/GP) revenues.

Hospitals. House Bill 5103 of the 2001-02 legislative session, which was passed by the Senate and the House of Representatives, proposed a hospital QAA fee. The Governor vetoed House Bill 5103.

The provisions of House Bill 5103 generally were the same as the QAA fee provisions in Senate Bill 1323. The House bill, however, would have appropriated $779,289,100 to the DCH in FY 2002-03 for hospital services and therapy, including $431,812,800 from Federal revenues, $66,513,500 from the Medicaid Quality Assurance Assessment Fund proposed by that bill, and $280,962,800 from State GF/GP revenues.

In his veto message, Governor Engler expressed support for the QAA fee approach, but cited a proposal on the November 2002 general election ballot that would have dedicated the State's tobacco settlement revenue for various purposes. The Governor stated that the ballot proposal and the QAA program were "inseparable" and that the State could "afford one, but not both". The ballot proposal later was defeated.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The Quality Assurance Assessment fee for long-term care facilities allows the State to increase Medicaid reimbursement rates, to eligible facilities, by an average of 7%, with no cost to the General Fund. The assessment for hospitals allows a 5% rate increase, which will produce GF/GP savings of $18,900,000.

Fiscal Analyst: John Walker