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BILL ANALYSIS

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Senate Bills 1037, 1038, and 1039 (as introduced 5-30-18)
Sponsor: Senator Peter MacGregor (S.B. 1037)
Senator Jim Stamas (S.B. 1038)
Senator Goeff Hansen (S.B. 1039)
Committee: Oversight

Date Completed: 6-6-18

CONTENT

Senate Bill 1037 would amend the Social Welfare Act to require the Department of Health and Human Services (DHHS) to do the following:

- **Process changes in existing Medicaid provider policy in the same manner as the Department uses to promulgate new policy.**
- **Establish a bed escrow program that would allow a nursing facility to set aside beds for 10 years without having to reestablish or relinquish beds.**
- **Establish a process to automatically change the level of care code in the Community Health Automated Medicaid Processing System immediately.**
- **Conduct a quarterly meeting to develop recommendations for promoting transparency between providers and DHHS staff, and for seeking improvement to the cost report audit and settlement process.**

Senate Bill 1038 would amend the Social Welfare Act to require the DHHS to do the following:

- **Accept a Medicaid cost report filed by a nursing facility within 45 days after the facility had filed the report.**
- **Ensure that a Medicaid cost report audit and settlement were complete within 18 months after the report was initially filed.**
- **Perform a full-scope audit of a nursing facility once every four years, and a limited-scope audit in the years a full-scope audit was not performed.**
- **Accept a cost report filed by a nursing facility, if an audit or settlement were not completed within 18 months, and issue a settlement with 30 days after the end of the 18-month period.**
- **Finalize all cost report audits and settlements within two years after the date the bill took effect.**
- **Submit to the Legislature an annual report concerning the cost report audit and settlement process, beginning two years after the date the bill took effect.**

The bill also would require a nursing facility to make certain documentation available to an auditor.

Senate Bill 1039 would amend the Social Welfare Act to require the DHHS to do the following:

- **-- Presume eligibility of an individual in a nursing facility applying for Medicaid, if the DHHS had not completed its eligibility determination within 45 of receiving a completed application.**
- **-- Require the Department to continue paying a nursing facility the full Medicaid per diem rate during a divestment penalty period, if the facility were not aware of the penalty.**

The bill also would add requirements pertaining to the availability of an outstation worker, the application of a court-ordered payment or garnishment, resources held in a trust solely for the benefit of a recipient's spouse, and attesting to a change in assets or income.

Each bill would take effect 90 days after its enactment.

Senate Bill 1037

Medicaid Provider Policies

The Medicaid Provider Manual contains policies regarding the coverage, billing, and reimbursement for Medicaid and other health care programs administered by the Department of Health and Human Services. The Medicaid Provider Manual specifies that when considering a change in Medicaid provider policy, the DHHS consults with affected providers and other interested parties regarding the proposed change. The consultation process involves a notification of the proposed change and the reasons for the change. The DHHS distributes to interested parties a copy of the draft policy change for review and comment.

Under the bill, if the DHHS changed how it interprets existing Medicaid provider policy, that change in policy would have to be processed in the same manner that the DHHS uses when promulgating new Medicaid provider policy. The process would have to include allowing Medicaid providers the opportunity to comment on the policy change and providing a prospective effective date for the change.

Bed Escrow Program

The bill would require the DHHS to establish a bed escrow program that allowed a nursing facility to set aside beds for at least 10 years without having to reestablish or relinquish the beds. The program could not require the beds set aside to be contiguous and would have to replace the current Medicaid policy for nonavailable bed plans for a nursing facility.

The Department would have to allow an entire nursing facility to be used during the period when the nursing facility had a bed in the bed escrow program.

The Department would have to establish a current asset value bed limit using a rolling 10-year history of new construction.

CHAMPS

The Community Health Automated Medicaid Processing System (CHAMPS) is a web-based DHHS Medicaid claims processing system that allows various functions to be completed online, including provider enrollment, claims status, payment status, and eligibility verification.

The bill would require the DHHS to establish a process to automatically change the level of care code in CHAMPS immediately when a filing had been made to disenroll a nursing facility resident from a health maintenance organization and the resident had completed 45 days of care at the facility.

Denied Rate Exception Secondary Review

Within 60 days after receiving a request from a nursing facility, the DHHS would have to perform a secondary review of a denied rate exception, including rate relief, or application of a classwide average rate. The Director of the Office of Audit would have to perform the secondary review.

Quarterly Review

The bill would require the DHHS to conduct a quarterly meeting and invite appropriate stakeholders, including at least one representative from each nursing facility provider trade association, and any other experts. Individuals who participated in the quarterly meetings, in conjunction with the DHHS, could designate advisory workgroups to develop recommendations on the discussion topics that should include at least the following:

-- Promoting transparency between providers and DHHS staff, including applying regulations and policy in an accurate, consistent, and timely manner and evaluating changes that had been implemented to resolve any identified problems and concerns.
-- Seeking quality improvement to the cost report audit and settlement process, including clarification to process-related policies and protocols.

Process-related policies and protocols would include the following:

-- Improving the auditors' quality and preparedness.
-- Enhanced communication between DHHS staff and providers.

Senate Bill 1038

Medicaid Cost Report

The bill would require the Department of Health and Human Services to accept a Medicaid cost report filed by a nursing facility within 45 days after the facility had filed the report.

"Medicaid cost report" or "cost report" would mean the cost of care reports submitted annually by a nursing facility that is participating in the Medicaid program, on DHHS cost reporting forms.

Audit & Settlement

The bill would require the DHHS to ensure that an audit of a Medicaid cost report filed by a facility and the related settlement performed by the DHHS were complete within 18 months after the initial filing of the report.

("Audit" would mean a review of the financial records used to complete a Medicaid cost report for compliance with allowable cost principles and other policy contained in the Medicaid Provider Manual. The term would include a limited-scope or full-scope audit.

"Settlement" would mean the process of reconciling a nursing facility's interim payments based on filed cost report data to audited cost report data. A final settlement would be computed after the cost report had been audited.)

The Department would have to perform a full-scope audit of a nursing facility once every four years. A full-scope audit could not last more than 30 days per cost report year for an individual facility or more than 180 days per cost report year for more than six commonly owned or controlled facilities. A limited-scope audit would have to be performed in the years a full-scope audit was not performed.

A customer satisfaction survey would have to be provided to the nursing facility and the auditor upon completion of a full-scope audit.

A nursing facility would have to make available to an auditor documentation required in accordance with the Medicaid State Plan, the Medicaid Provider Manual, the Medicare principles of reimbursement as described in the Provider Reimbursement Manual, the Code of Federal Regulations relating to Medicare, and the Provider Reimbursement Manual. A nursing facility would have to enhance use of electronic documents and correspondence to exchange information to reduce time and travel required for nursing facility audits.

If an audit or settlement were not completed within 18 months, the DHHS would have to accept the cost report as filed by a nursing facility and issue a settlement within 30 days after the end 18-month period.

The Department would have to provide auditor education to ensure consistency in application of DHHS policy. The Department would have to establish an ongoing review of all audit adjustments for consistency in applying DHHS policy and would have to identify and eliminate any inconsistencies between audits.

Within two years after the date the bill took effect, the DHHS would have to finalize all audits and settlements for cost reports that had been filed since before the date the bill took effect. A cost report that the DHHS had not completed within the two-year period would have to be accepted by the DHHS as filed by the nursing facility, and a cost report settlement would have to be issued within 30 days after acceptance.

External Review

Within one year after the date the bill took effect, an external review by a third party of the Office of Audit's practices related to nursing facility providers' filing of Medicaid cost reports and audit and settlements would have to be completed. The purpose of the external review would have to be to compare the efficiency and cost-benefit effectiveness of existing DHHS audit practices with contracting functions of audits or settlements to an outside entity. The Department would be responsible for obtaining the external review and would have to provide the complete review to the Legislature.

Report to Legislature

Beginning two years after the date the bill took effect, the DHHS would have to provide an annual report to the Legislature on the implementation and results of the cost report audit and settlement process established under the bill. The report would have to include all of the following:

-- The number of limited-scope audits, full-scope audits, and any other type of audit performed during the reporting period.

-- How the DHHS had complied with the one-time-every-four-years full-scope audit requirement.
-- Results of the audit satisfaction surveys and how the DHHS had responded to them.

Senate Bill 1039

The Social Welfare Act requires the Department of Health and Human Services to establish a program for medical assistance for the medically indigent (commonly called Medicaid).

Under the bill, for an individual in a nursing facility applying for medical assistance under the Act, if the DHHS had not completed its eligibility determination within 45 days of receiving a completed application, that individual would have to be afforded presumptive eligibility in the medical assistance program.

When the DHHS determined that a divestment penalty period was appropriate for a recipient residing in a nursing facility, and the nursing facility was not aware of the penalty, the Department would have to continue to pay the nursing facility the full Medicaid per diem rate during the divestment penalty period and would have to collect the money paid during the divestment period directly from the recipient.

When the DHHS performed an eligibility redetermination for a medical assistance recipient who had resided in a nursing facility for at least 180 days in the past 12 months, the Department would have to allow the recipient or his or her representative to attest to any change in assets or income to provide an accelerated redetermination process.

The Department would have to make available an outstation worker to use to facilitate Medicaid eligibility determination to a nursing facility that requested an outstation worker.

If a recipient residing in a nursing facility had a court-ordered payment or garnishment, the DHHS would have to automatically apply the payment or garnishment before determining the patient-pay amount.

The Department would have to hold a nursing facility harmless for resources held in a trust solely for the benefit of a recipient's spouse if the nursing facility were unaware of the solely for benefit trust.

Proposed MCL 400.111n (S.B. 1037)
Proposed MCL 400.111m (S.B. 1038)
Proposed MCL 400.105g (S.B. 1039)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bills would likely increase State GF/GP costs for the Medicaid program by millions of dollars due increased reimbursements and due to the requirement that the State cover the cost of services to certain nursing home residents subject to divestment penalties. There would be an indirect, but lesser in magnitude, positive fiscal impact on local units of government as increases in State costs and shifts in costs to the State would have a positive impact on county-owned medical care facilities (MCFs).

Senate Bill 1037 would establish a bed escrow program that would allow a nursing facility to set aside beds for at least 10 years without having to reestablish or relinquish the beds. In effect, this would increase the occupancy rate for the beds not in escrow, allowing more facilities to meet the State's occupancy standards. Facilities whose occupancy is below the occupancy standard receive lower per diem reimbursement than facilities at or above the

occupancy standard, so changes that would allow more facilities to meet the occupancy standard would increase costs. Increases in reimbursements for county-owned MCFs (which make up about 18.0% of Medicaid nursing facility costs) would lead to an indirect positive fiscal impact on local units of government.

Senate Bill 1038, which addresses nursing facility audits, would likely have a minor fiscal impact. There would likely be some marginal administrative savings for nursing facilities, including MCFs.

Senate Bill 1039 would establish presumptive eligibility for individuals in nursing facilities if an eligibility determination had not been completed within 45 days after a completed application for Medicaid was submitted on behalf of a nursing facility resident. This would likely not have a significant fiscal impact as Medicaid eligibility is generally retroactive to three months before the submission of an application, so the payments, for those deemed eligible, would have been made regardless. The timing of payments would likely improve the cash flow situation for nursing facilities, including MCFs.

Senate Bill 1039 also would make changes to reimbursements when a resident is subject to a divestment penalty. An individual residing in a nursing facility must spend down income and assets before becoming eligible for Medicaid reimbursement. A divestment penalty can be assessed when a nursing facility resident's assets are transferred to others contrary to Federal limits on such transfers. Under the bill, if the nursing facility were not aware of the divestment penalty, the State would have to reimburse the facility the full Medicaid per diem rate during the divestment penalty period. Furthermore, the State would be responsible for collecting the divestment penalty period costs from the resident. This could increase costs significantly for the State as a person subject to a divestment penalty is not eligible for Medicaid during that period, so it is unlikely that such per diem payments would earn Federal Medicaid match. (At present, the Federal government covers 64.78% of the costs of Medicaid long-term care services in Michigan.) This cost would be significant, and potentially in the tens of millions of dollars due to the likely loss of Federal match for certain divestment penalty cases.

The bills also include a number of less significant provisions that would have fiscal impacts of much smaller magnitude than the bed escrow and divestment penalty reimbursement provisions.

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