

# Legislative Analysis



## MEDICAID REIMBURSEMENT OF NURSING FACILITIES

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**Senate Bill 348 (S-1) as reported from House committee**

**Sponsor: Sen. Peter MacGregor**

**1st House Committee: Health Policy**

**2nd House Committee: Ways and Means**

**Senate Committee: Health Policy and Human Services**

**Complete to 11-5-19**

*(Enacted as Public Act 178 of 2019)*

### SUMMARY:

Senate Bill 348 would amend the Social Welfare Act to provide that, generally, a Michigan Department of Health and Human Services (DHHS)-issued change to an existing Medicaid provider policy directly affecting nursing facility **Medicaid cost reports** must have a prospective effective date, or apply only to future reports.

However, a policy could have a retrospective effective date as part of a state plan amendment approval or waiver approval or if required by state law, federal law, or judicial ruling.

**Medicaid cost report** is defined in the act as the cost of care reports submitted annually by a nursing facility that is participating in the Medicaid program at a utilization rate on average of at least six Medicaid residents, on DHHS cost reporting forms. A nursing facility provider with fewer than six Medicaid residents per day must file a “less than complete” cost report and is not subject to audit.

Proposed MCL 400.111n

### FISCAL IMPACT:

Senate Bill 348 would result in minor, likely negligible, reductions in cost savings when issuing settlements for end-of-year nursing facility cost reports. This bill would require DHHS to use prospective effective dates for changes in interpretations of Medicaid policies affecting end-of-year nursing facility cost reports, unless otherwise required to implement retroactive effective dates by state or federal law or judicial ruling. As such, nursing facilities would have additional time to come into compliance with the reinterpreted Medicaid reimbursement policy and would be less likely to have to pay back DHHS for services rendered that were not Medicaid-eligible when obtaining a settlement after review of their submitted cost report.

## BRIEF DISCUSSION:

The bill is effectively a reintroduction of Senate Bill 1037 of the 2017-18 legislative session,<sup>1</sup> which was passed by both houses but vetoed by the governor on December 28, 2018. In his veto message, Governor Snyder wrote: “The legislation has significant revenue and administration issues that need to be resolved before this can be considered appropriate policy in our state. Accordingly, I am returning these bills without signature in order to allow for more thorough evaluation of the revenue and administration impacts of the bills.”

According to committee testimony, nursing facilities provide care to Medicaid beneficiaries and are later reimbursed for that care. At the end of each year, each facility submits a Medicaid cost report to DHHS on the costs incurred. That report is audited by DHHS within 21 months, and a settlement is reached whereby the two parties resolve any discrepancies in reimbursement. If there are changes in DHHS policies, there is a promulgation process that allows for public comment and, if approved, the policy is effective going forward. However, proponents of the bill argue that DHHS has occasionally applied policies that were meant to be applied prospectively to reports that had been filed months earlier. They stated that the bill would prohibit DHHS from reinterpreting policies in order to apply them retrospectively, and instead ensure that the policy in place when the cost report was filed would be applied.

## POSITIONS:

A representative of the Health Care Association of Michigan testified in support of the bill. (10-24-19)

Michigan County Medical Care Facilities Council indicated support for the bill. (10-24-19)

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

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<sup>1</sup> House Fiscal Agency analysis of Senate Bill 1037 of 2017-18: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-1037-96934D41.pdf>