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

SPONSOR Ortiz y Pino **ORIGINAL DATE** 2/28/17 **LAST UPDATED** 3/07/17 **HB**

SHORT TITLE Quality Assurance Assessment Act **SB** 400/aSPAC/ec

ANALYST Boerner/Graeser

See **FISCAL IMPACT** section for discussion of appropriate uses of these funds.

REVENUE (dollars in thousands)

Estimated Revenue					R or NR **	Fund Affected
FY17	FY18	FY19	FY20	FY21		
	$24,000.0	$24,000.0	$24,000.0	$24,000.0	R	Facility quality assurance fund
	$77,000.0	$77,000.0	$77,000.0	$77,000.0	R	Medicaid Match

Parenthesis ( ) indicate expenditure decreases. ** R = recurring; NR = non-recurring

HSD indicates they would need additional budget and staff to implement the provisions of this bill, but did not quantify this need.

Duplicates, Relates to, Conflicts with, Companion to HB-202, HB 412, SB-123, SB-433, SB-448, SB 457 relate in some fashion to GRT taxes on hospitals and other healthcare practitioners.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Office of the Attorney General (OAG)
Human Services Department (HSD)
Department of Health (DOH)

SUMMARY

Synopsis of SPAC amendment

The Senate Public Affairs Committee amendment increases the amount of the quality assurance fee that could be used for purposes other than increasing the Medicaid reimbursement rates for the various nursing home classes from 15% to 20%.

Synopsis of Bill

Senate Bill 400 requires HSD to implement and administer a provider tax on and increase Medicaid reimbursement for Skilled Nursing Facilities (SNFs), Intermediate Care Facilities (ICFs), and Intermediate Care Facilities for individuals with intellectual disabilities (ICFIIDs).

The bill requires HSD to initially survey SNFs, ICFs and ICFIIDs as to resident days broken down by payer and net revenue earned for the three quarters preceding the effective date of the bill. Based on that data, HSD will calculate the increase in Medicaid reimbursement the facilities are entitled to. Neither the fee, nor the increased Medicaid reimbursement would go into effect unless the federal Centers for Medicare and Medicaid services approved the state's imposition of this quality assurance fee and granted a uniformity waiver to the state.

HSD has provided a more detailed description of the provisions of the bill:

Sections 3 and 5 create the "quality assurance fee," Sections 4 and 6 create a non-recurring "Facility quality assurance fund(s)" for Medicaid reimbursement in the state treasury. The funds consist of appropriations and quality assurance fees paid by SNFs and ICFs, as well as income from the investment of the fund, gifts, grants, donation and bequests. The funds would be administered by HSD, subject to appropriation by the legislature, with money disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the HSD secretary or authorized representative. Fund balances remaining at the end of a fiscal year do not revert to the general fund. Sub-sections 4b and 6b prioritize uses of the funds to; 1) reimburse the Medicaid share of the provider fees as a pass-through, Medicaid-allowable cost; and 2) increase each facility's respective Medicaid fee-for-service and Medicaid managed care reimbursement rates above those in effect on July 1, 2017. A maximum of fifteen percent of the total amount of annual quality assurance fee collected by HSD may be used for purposes other than those specified above.

Section 8 repeals this act effective January 1st, 2021.

Section 9 states that it is necessary for the public peace, health and safety that this act takes effect immediately.

FISCAL IMPLICATIONS

HSD has provided the following fiscal analysis:

SB 400 would require HSD to determine and pay a quality assurance fee per non-Medicare bed day to SNFs, ICFs, and ICFIIDs. HSD would also be required to request that the Centers for Medicare and Medicaid Services approve a quality assurance fee uniformity waiver. The provider tax on SNFs, ICFs and ICFIIDs constitutes an expense to these facilities creating potential tax revenue to the state in the amount of $24 million per year. Providers would be reimbursed for the tax, and in the process potentially receive increased Medicaid payments by drawing down a federal match of approximately [$77] million. Consequently providers could receive a net revenue increase in the amount of [$53] million per year.

The analysis utilizes projected revenue for the identified facilities at $400 million per year. The CMS tax rate limit of 6% is then utilized to calculate the $24 million.

SB 400 specifies that the Facility Quality Assurance Fund shall be used for the following purposes and in the following order of priority: reimburse the Medicaid share of the quality assurance fee as a pass-through, Medicaid-allowable costs; increase each facility's respective Medicaid fee-for-service and Medicaid managed care reimbursement rates above those in effect on July 1, 2017; a maximum of ~~fifteen~~ twenty percent of the total amount of annual quality assurance fee collected by HSD may be used for purposes other than those specified above.

Fees and reimbursements are expected to grow about 2% annually.

	FY 17	FY 18	FY 19	FY 20	FY 21
			($ in thousands)		
	$24,000	$24,500	$25,000	$25,500	$26,000
	$77,200	$78,800	$80,400	$82,000	$83,700
	$101,200	$103,300	$105,400	$107,500	$109,700
15%	Increase in reimb	$87,800	$89,600	$91,400	$93,200
	HSD Other	$15,500	$15,800	$16,100	$16,500
20%	Increase in reimb	$82,600	$84,300	$86,000	$87,800
	HSD Other	$20,700	$21,100	$21,500	$21,900

~~This analysis does not quantify the 15% other uses. However, if the alternative uses of the provider tax are also eligible for the Medicaid match, then the net benefits to the SNFs, ICFs and ICFIIDs would be reduced to approximately $47.6 million and the other uses would be $7.4 million. One appropriate use of the $7.4 million would be to increase the Medicaid reimbursement rate for facilities with fewer than 60 beds (Section 3(D) of the bill).~~

The increase from 15% to 20% in other uses would reduce the net benefits to the SNFs, ICFs and ICFIIDs to approximately $59.2 million for FY 18 and allow HSD to reallocate to other purposes $20.7 million. One appropriate use of the $20.7 million would be to increase the Medicaid reimbursement rate for facilities with fewer than 60 beds (Section 3(D) of the bill.) Alternatively, the $20.7 million could be used to support the regular Medicaid program.

($ millions)	15% other	20% other	Difference
Fee from SNFs, ICFs & IDFIIDs	24.5	24.5	0.0
Medicaid Match	78.8	78.8	0.0
Increase in Reimbursements	87.8	82.6	-5.2
Net benefit to facilities	63.3	58.1	-5.2
HSD retention (with match)	15.5	20.7	+5.2

SIGNIFICANT ISSUES

DOH describes the overall strategy and specific impact on NMDOH facilities as follows:

The assessed fee is a Medicaid allowable pass-through cost. The purpose of SB400 is to generate additional funds to increase the State's federal matching Medicaid funds to increase Medicaid reimbursement rates and support quality improvement within these facilities.

Most states participate in some type of health provider tax or fee to augment Medicaid matching fees. A study entitled "Health Provider and Industry State Taxes and Fees" by the National Conference of State Legislatures (NCSL) provides a comparative summary of the different types of health tax and fee programs of each state and the dollar impact on state revenue as a result[1]:

- 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.

It appears that SB400 would impact the Department of Health (NMDOH) long term care facilities in the following ways:

- NMDOH facilities would be required to pay an assessed fee quarterly based on number of residents, payer mix, and net revenue;
- NMDOH facilities would in turn receive increased Medicaid fee-for-service and Medicaid managed care reimbursement rates; and
- Since the assessed fees are a Medicaid allowable pass-through cost, this could result in a net gain for the NMDOH facilities.

HSD notes the following:

The imposition of a provider tax on SNFs, IFCs and ICFIIDs will require an approved waiver and state plan amendment from the Centers for Medicare and Medicaid (CMS). It is unlikely that this waiver will be approved prior to the implementation of this bill. SB 400 specifies that the fee be assessed retroactively and shall be due twenty days following approval of the waiver. This may not be possible considering the approval timeframes and approval parameters by CMS.

SB400 does not specify the amount of the fee nor does it place sufficient parameters around the amount of the fee.

Under current regulations, states may not use provider tax revenues for the state share of Medicaid spending unless the tax meets three requirements: 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. SB 400 states that this fee is not uniform or broad-based. This may jeopardize CMS approval. Additionally, depending on

[1] (2016 NCSL Health Provider and Industry State Taxes and Fees http://www.ncsl.org/research/health/health-provider-and-industry-state-taxes-and-fees.aspx)

the level of the fee established, and combinations of other fees and taxes like gross receipts, the total amount may exceed this threshold.

HSD properly points out that the provisions of this bill may interact with other bills of this session, including HB-202. However, HB-202 does not amend the tax treatment of the gross receipts of SNFs, ICFs or ICFIIDs. The gross receipts tax is broad based and uniform and would not constitute a prohibited provider tax.

LFC notes that the provisions of this bill, if approved by CMS, holds the facilities harmless to the increased assessment fee and increases the amount of Medicaid reimbursement received by the facilities. HSD generates an additional amount of revenue from the 15% "other uses" provision to supplement other reimbursements. This is emphatically not a "tax increase" because of the federal match.

PERFORMANCE IMPLICATIONS

The intent of the bill is to improve quality service delivery at the affected facilities by increasing net revenue. DOH points out that their long-term care facilities would participate in this revenue enhancement and quality improvement.

ADMINISTRATIVE IMPLICATIONS

SB 400 would require HSD to administer the fee by collecting data, analyzing data, calculate fees, seeking federal approval, billing providers, collecting revenue, tracking revenue, refunding payments and other functions. This is activity HSD could conduct but it would require HSD to add staff to fulfill these functions.

LFC notes that any additions to staff or budget should be carefully considered. It would be inefficient to use any portion of this quality assurance assessment revenue for administrative purposes, if such uses jeopardized the federal match – estimated at approximately 77% of total Medicaid expenditures. HSD's response did not address that point.

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 somewhat serendipitous 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 exploit 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 the utilization and revenue survey for use in healthcare planning efforts.

TECHNICAL ISSUES

OAG notes the following, "…the types of facilities affected by HSD's assessment are defined by federal law, yet the Act and funds from assessments collected pursuant to it are created in State law. "Intellectual disabilities" is not defined in State law. Defining that

phrase through citation to federal law and regulation or through restating the definition of "intellectual disabilities" within the Quality Assurance Assessment Act could be helpful for persons and facilities in New Mexico.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The state would lose the opportunity to join 42 other states in creatively pushing the envelope of Medicaid match.

LS & CB/jle