LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

301 State House
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FISCAL IMPACT STATEMENT

LS 6399 **DATE PREPARED:** Jan 14, 2000
BILL NUMBER: HB 1124 **BILL AMENDED:**

SUBJECT: Health Facilities.

FISCAL ANALYST: Alan Gossard
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FUNDS AFFECTED: **X GENERAL**
X DEDICATED
X FEDERAL

IMPACT: State

Summary of Legislation: *Nursing Home Regulatory Enforcement:* This bill allows oral allegation of a breach of the health facilities law or rules. The bill requires the State Department of Health (SDH) to investigate all breach allegations. The bill also increases the potential fines for breaches. The bill allows SDH, after imposing a fine on a health facility, to deduct from the fine funds expended by the health facility to retain a consultant or other professional or to provide staff education or training to assist in correcting or preventing future breaches.

This bill also establishes the Quality Improvement and Education Fund. Half of the fines collected are to be deposited in this Fund. The bill also specifies that a penalty may be imposed for each violation or repeat of a violation. This bill also limits to 90 the number of consecutive days that new admissions to a health facility may be suspended upon renewal of an order suspending admissions. It also prohibits the collection from certain facilities of a fine under state law in addition to a monetary penalty under federal law.

State Health Finance Commission: This bill also assigns certain study topics to the Health Finance Commission.

Informal Dispute Resolution Process: The bill also requires the State Department of Health to operate an informal dispute resolution (IDR) program by contracting with an independent organization. It also establishes procedures for the IDR process.

Effective Date: July 1, 2000; September 1, 2000.

Explanation of State Expenditures: (Revised) *Expenditure and Revenue Summary:* Net state costs after federal reimbursement for the Informal Dispute Resolution (IDR) process are estimated to be $75,000 to $165,000 for each of the next two years. Net additional indirect costs associated with increasing the fines and penalties for violation of state nursing home regulations is estimated to range up to $260,000 per year depending upon the increase in nursing home appeals *attributable* to the increase in fines and penalties provided in this bill. Regarding new revenues, nursing home fine collections by the state are expected to double as a result of this bill resulting in an increase in collections of about $210,000. New fine collections would be split between the state General Fund and the Quality Improvement and Education Fund (currently, the General Fund receives all fines collected.) The amount deposited into the General Fund would remain nearly constant and the new fund would receive an estimated $210,000. (See Explanation of State Revenues, below.) [Note: Initial estimates for this bill have been revised to reflect the fact that federal reimbursement through the Medicare and Medicaid programs for nursing home regulation and enforcement activities would not increase due to new expenditures on the state-licensing side as provided in this bill.]

Background Regarding Informal Dispute Resolution Process: Federal regulations require each state to provide for an Informal Dispute Resolution process to attempt to resolve disputed survey findings informally before the case enters the formal appeal process. Most states, including Indiana, currently operate the IDR in-house using state employees. This bill requires the State Department of Health to contract with an independent organization to conduct the IDR. This bill provides that for each dispute, the independent organization is to establish a panel composed of one individual appointed by the State Department of Health and one individual appointed by the independent organization, with a possible third individual in those cases where there is disagreement between the first two panel members. The requirement to contract with an independent organization for IDR is for a period of two years.

The state of Michigan is the only other state that currently contracts with an independent organization for the IDR process. Michigan was able to do so for an average cost per case of $129 for FFY99 ($128 per case for the prior year). This includes costs for training. Allowing for a slightly higher cost for personnel in Indiana and based on the 152 reviews conducted last year, the annual cost for conducting the IDR panel is estimated to be about $75,000. This includes the estimated cost for contracting with an independent organization plus the cost of an additional SDH employee to provide for the state's representative on the IDR panel. Michigan also reports that they have not experienced an increase in the number of reviews required as a result of the change in the IDR process, nor have they had to increase their state staff to support the process.

On the other hand, the State Department of Health believes that changing to an independent organization for the IDR process in combination with increased fines may triple the number of cases disputed by the industry, as well as increase the workload on existing staff. SDH anticipates the need for two additional staff in addition to the contract costs for a total cost estimated to be about $165,400 per year.

Both outcomes described above are recognized as possibilities depending upon the reaction of the nursing home industry to the change in the dispute resolution process and in the fine structure. Consequently, the net state costs for the IDR process are estimated to range from $75,000 to $165,000 for each of the next two years.

Background Regarding Indirect Costs Associated with Increasing Fines and Penalties: There could potentially be some additional staff costs associated with the increasing of nursing home regulatory fines and penalties if the act of increasing fines and penalties leads to a change in industry behavior. The State Department of Health projects a need for five additional staff to cope with increased rates of litigation and appeals expected from the industry as a result of the new fines and penalties. New staff with associated costs would cost the state approximately $259,000.

There is some evidence to suggest that this may occur, although the conclusion is not universally held. The

Wall Street Journal reported that the federal Departmental Appeals Board of the U.S. Division of Health and Human Services has experienced a significant increase in appeals since federal regulators began levying larger penalties on nursing home owners for regulatory violations. The federal caseload has grown from 183 cases in 1996 to 670 cases in 1998.

However, officials from two other states that have increased regulatory fines and remedies were also contacted. Officials from both Florida (significantly higher fines implemented in July 1999) and Maine (currently promulgating new rules establishing a small increase in fines) indicated that, although the number of appeals have been increasing generally, they have no expectation of significantly increased numbers of appeals or litigation volume or a need for new staff to accommodate increased caseloads resulting from their state's regulatory changes.

Consequently, although it is not a certainty that staff requirements will increase due solely to the provisions of this bill, this note does recognize the possibility that industry behavior may change as a result of the increase in fines and remedies, potentially resulting in some need for additional staff. However, the number of new staff that may be required is not known. Depending upon industry behavior, the resulting additional net state costs could range up to $259,000 as described above. The funds and resources required for any new employees could be supplied through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. According to the December 1999 manning table, the State Department of Health has 94 vacant positions. Ultimately, the source of funds and resources required will depend upon legislative and administrative actions.

Explanation of State Revenues: *Summary:* Nursing home fine collections by the state are expected to double as a result of this bill resulting in an increase in collections of about $210,000. This bill also establishes the Quality Improvement and Education Fund. New deposits into the Quality Improvement and Education Fund are estimated to be about $210,000 annually. Assuming fine collections double as a result of this bill, the amount of state-levied fines deposited into the General Fund will remain nearly constant. (See below)

Background: This bill makes several changes to the fines and remedies allowed to be imposed for violation of federal and state nursing facility regulations. According to HCFA, to assess compliance with federal participation requirements by those nursing facilities providing services to Medicare or Medicaid beneficiaries, HCFA contracts with the Indiana State Department of Health to survey nursing facilities. SDH also surveys Indiana nursing facilities that are neither Medicaid or Medicare-certified.

After the State Department of Health inspects a Medicaid or Medicare-certified facility and discovers breaches, the Department makes recommendations for sanctions to HCFA. Available remedies include civil monetary penalties, state monitoring, a directed plan of correction, installation of a temporary manager, denial of payment for all new Medicare and Medicaid admissions, denial of payment of all Medicare or Medicaid residents, and directed in-service training. The state and/or HCFA may opt to give the nursing facility an opportunity to correct the problem by a specified date, with the remedy held as a threat if correction is not completed. Remedies may also be imposed immediately.

If the federal government chooses to proceed and to levy and collect fines (historically, about half of the time, but more often recently), the fine revenue collected by the federal government is deposited into the state's Civil Monetary Penalty Fund and is to be used for the benefit of nursing facility residents in Indiana.

However, if the federal government chooses not to proceed and the State Department of Health proceeds with the enforcement action, the fine revenue is deposited into the state General Fund.

The amount of FY99 fines deposited in the state General Fund (as of November 1999) was $208,700. The increased fines and penalties provided in this bill are expected to double the collections for a total of about $420,000 annually. This bill also establishes the Quality Improvement and Education Fund for the purpose of conducting education and training programs, development of best practice guidelines, and for clinical research designed to improve the quality of care provided in nursing facilities. This bill also provides that 50% of future fine revenues are to be deposited into the state General Fund (estimated to be about $210,000) and 50% are to be deposited into the Quality Improvement and Education Fund (estimated to be about $210,000). (Consequently, if fine collections double, the amount deposited into the state General Fund will remain nearly constant.) Money in the Quality Improvement and Education Fund at the end of a state fiscal year does not revert.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: State Department of Health

Local Agencies Affected:

Information Sources: Gerald Coleman, Indiana State Department of Health, (317) 233-7022.
Dr. Gladys Thomas, Michigan Division of Health Facility Licensing and Certification, (517) 241-2636.
Pete Buigas, Florida Agency for Health Care Administration, (850) 487-2527.
Louis Doroqi, Maine Division of Licensing and Certification, (207) 624-5443.
"Appeals Mire Collection of Nursing Home Fines", Wall Street Journal, January 18, 1999, p. B1.