LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
http://www.in.gov/legislative

FISCAL IMPACT STATEMENT

LS 7436 | **NOTE PREPARED:** Jan 24, 2011
BILL NUMBER: SB 460 | **BILL AMENDED:**

SUBJECT: Quality Assessment and Moratorium.

FIRST AUTHOR: Sen. Miller | **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X__GENERAL | **IMPACT:** State & Local
DEDICATED
X FEDERAL

Summary of Legislation: *Collection of Medicaid Overpayments:* This bill requires and sets forth the procedure for an institutional provider and a noninstitutional provider to reimburse the Office of the Secretary of Family and Social Services (FSSA) for certain Medicaid overpayments made to the provider.

Quality Assessment Fee (QAF): The bill extends the collection of a nursing facility Quality Assessment Fee (QAF) with changes to the amount collected and to the distribution of the dollars.

Moratorium: The bill extends a moratorium on the certification of new or converted comprehensive care beds for participation in the state Medicaid program until June 30, 2014. It further establishes a moratorium on the construction and certification of health facilities with some exceptions, until June 30, 2014.

Effective Date: July 1, 2011.

Explanation of State Expenditures: *Summary:* The provisions affecting the collection of Medicaid overpayments should result in increased collections of amounts owed to the state and federal government. The fiscal impact would depend on the extent to which overpayments are made, identified, and subsequently collected. In 2009, OMPP identified a collection rate of approximately 36% and a balance of overpayments of $24 M.

Expenditures related to the moratorium on the construction, licensure, and certification of nursing facility beds would be anticipated to be negligible for the ISDH. ISDH may see a loss of some revenue related to plan review fees and nursing facility bed licensure.

Collection of Medicaid Overpayments: The bill requires a provider that is not a health facility or an ICF/MR facility that has received a notice from the Office of Medicaid Policy and Planning (OMPP) that an overpayment has occurred, to repay the amount of the overpayment within 60 days of receiving the notice. The provider may request a hearing and any subsequent appeals, but the overpayment must be repaid to the OMPP. If it is subsequently determined that the provider was not overpaid, OMPP is required to return the amount of the overpayment with interest calculated from the date it was received by OMPP. The bill also establishes a procedure for overpayments to be recouped through an adjusted rate if the provider is a health facility or an ICF/MR facility.

OMPP reported that the current hearing and appeal process can delay the collection of overpayments for years. OMPP estimated in 2009, that the overpayment balance was in excess of $24 M and that the collection rate for all identified overpayments was approximately 36%. [This information will be updated when data is made available by OMPP.]

Quality Assessment Fee (QAF): This bill would authorize OMPP to apply to the Centers for Medicare and Medicaid Services (CMS) for approval to increase the amount of the QAF to the maximum percentage allowed by federal law and extend the collection of the fee for three years - until June 30, 2014. Medicaid waiver and plan amendments are generally considered to be administrative in nature and achievable within the current level of resources available to the OMPP. OMPP will be required to revise the current assessment methodology and the distribution of the collections. The ultimate QAF collections would depend on federal actions. [See *Explanation of State Revenues:* below for estimated revenues.] Should federal financial participation become unavailable to provide for the additional reimbursement, the bill provides that OMPP will cease to collect the QAF. The bill specifies that any increase in reimbursement due to maximizing the QAF is to be exclusively used for initiatives to promote and enhance improvements in quality of care for nursing facility residents.

The bill requires OMPP to notify the Indiana State Department of Health (ISDH) if any facility has failed to pay the QAF more that 120 days after the payment is due. The ISDH is required to notify the facility that the facility's license will be revoked if the QAF is not paid. This sanction provision is in place currently for the QAF.

Distribution of QAF expenditures: The current statute requires that 80% of the QAF collected must be used to leverage federal Medicaid matching funds to increase nursing facility reimbursement targeting specific uses. The remaining 20% of the estimated QAF must be used to offset Medicaid costs incurred by the state.

This bill would require the following percentage distributions of the QAF collections for three years.

Designated Purpose	**FY 2012**	**FY 2013**	**FY 2014**
Nursing Facilities Services	68.0 %	68.0 %	72.2 %
Aged and Disabled Waiver Services	1.4 %	1.4 %	1.4 %
Other Medicaid Services	17.6 %	20.0 %	20.0 %
State Administrative Share for Federal Health Care Reform	4.0 %	6.4 %	6.4 %
To be Determined by OMPP	9.0 %	4.2 %	

If the maximized QAF results in annual collections of $144.4 M, the amounts shown below would be available to leverage federal funds for the designated purposes.

Designated Purpose	FY 2012	FY 2013	FY 2014
Nursing Facilities Services	$ 98.2 M	$ 98.2 M	$104.3 M
Aged and Disabled Waiver Services	$ 2.0 M	$ 2.0 M	$ 2.0 M
Other Medicaid Services	$ 25.4 M	$ 28.9 M	$ 28.9 M
State Administrative Share for Federal Health Care Reform	$ 5.8 M	$ 9.2 M	$ 9.2 M
To be Determined by OMPP	$ 13.0 M	$ 6.1 M	
Total	**$ 144.4 M**	**$ 144.4 M**	**$ 144.4 M**

Nursing Facility Bed Moratorium: The bill establishes a moratorium on the construction and licensure of health facilities with some exceptions, until June 30, 2014. The bill would provide exceptions for facilities that: (1) have complied with the existing moratorium and that have physically begun significant construction of a facility before May 15, 2011; (2) is a new continuing care retirement community that will have no Medicaid certified beds; (3) for up to 100 beds annually located within a small house facility [an innovative and unique approach to the delivery of comprehensive care containing no more than 12 beds]; and (4) are currently licensed facilities that are expanding Medicare certified or noncertified beds or are transferring or relocating an existing facility within the county in which it is located.

The bill further extends the existing moratorium on the certification of new or converted comprehensive care beds for participation in the state Medicaid program until June 30, 2014. This provision does not apply to the conversion of hospital acute care beds to Medicare/Medicaid certified comprehensive care beds. The bill would also exempt the construction or conversions of comprehensive care beds that are intended to replace existing certified comprehensive care beds within the same facility or a replacement facility with the same ownership and within the same county as the facility being replaced.

The State Department of Health has reported in the past that extending the administration of a moratorium on the licensure or certification of new nursing facility beds or facilities would have a negligible fiscal impact. The Department would likely reject applications for plan reviews, new licenses, and applications for Medicaid or Medicare certifications for affected facilities until the expiration of the moratorium on June 30, 2014.

Explanation of State Revenues: *Nursing Facility Bed Moratorium:* Depending on the number of applications that might be rejected, ISDH plan review or license fee revenues would not be collected for any new beds or facilities delayed due to the moratorium extension. A nursing facility pays a $200 fee for the first 50 additional beds and $10 for each bed in excess of 50. Plan review fees are $150 for nursing facilities. License and plan review fee revenue is deposited in the General Fund. This bill does not affect the renewal of existing licenses.

Extension of the QAF: Extending the authorization for the collection of the QAF and maximizing the amount to be collected from July 31, 2011, to June 30, 2014 would authorize an estimated annual collection of about $144.4 M for each of FY 2012, FY 2013, and FY 2014 if nursing facility days remain constant. The total annual collections and the state share of the collections from both provisions are as follows.

		State Benefit From		
Fiscal Year	Total QAF Collections	Extension of QAF	Maximization	Total Collections
2006	$ 327.4 M	$ 62.7 M		
2007	$ 108.4 M	$ 21.7 M		
2008	$ 103.4 M	$ 20.7 M		
2009	$ 96.5 M	$ 19.3 M	$ 14.5 M @	$ 33.8 M#
2010	$ 98.8 M	$ 19.8 M	$ 19.8 M @	$ 39.6 M
2011*	$ 98.2 M	$ 19.6 M	$ 9.8 M @	$ 29.4 M#
2012*	$ 144.4 M	$ 19.6 M	$ 11.6 M	$ 31.2 M
2013*	$ 144.4 M	$ 19.6 M	$ 18.5 M	$ 38.1 M
2014*	$144.4 M	$ 19.6 M	$ 18.5 M	$ 38.1 M
* Estimated; assumes nursing facility days remain constant.				
@ Estimated temporary increase in state share for ARRA stimulus.				
# Temporary increase in state share is for less than a full year.				

Background: In the current model approved by CMS, the amount of the QAF is based on a nursing facility's total annual patient days. Quality assessments of $10 per non-Medicare patient day are to be collected from nursing facilities with total annual patient days of less than 70,000 days. Facilities with annual patient days equal to or greater than 70,000 days will be assessed $2.50 per non-Medicare day. Local government-owned nursing facilities will be assessed $2.50 per non-Medicare patient day, as well. Nursing facilities that are continuing care retirement communities, hospital-based, or owned by the state are exempt from the QAF.

Medicaid is jointly funded by the state and federal governments. The effective state share of program expenditures is approximately 34% for most services. Medicaid medical services are matched by the effective federal match rate (FMAP) in Indiana at approximately 66%. Administrative expenditures with certain exceptions are matched at the federal rate of 50%. Federal ARRA provides that enhanced Medicaid stimulus funding will be available to the state until December 31, 2010. An amendment to the ARRA subsequently extended phased-down stimulus funding until June 30, 2011.

Explanation of Local Expenditures: See *Explanation of State Revenues*, above, as it relates to municipally owned or county-owned nursing facilities or health facilities.

Explanation of Local Revenues: See *Explanation of State Expenditures*, above, as it relates to Health and Hospital Corporation of Marion County, municipally owned or county-owned nursing facilities, or health facilities.

State Agencies Affected: OMPP, ISDH.

Local Agencies Affected: Health and Hospital Corporation of Marion County owned, Municipally owned, or county-owned nursing facilities or health facilities.

Information Sources: Family and Social Services Administration, OMPP.

Fiscal Analyst: Kathy Norris, 317-234-1360.