

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7436**

**BILL NUMBER: SB 460**

**NOTE PREPARED: Feb 18, 2011**

**BILL AMENDED: Feb 17, 2011**

**SUBJECT:** Quality Assessment and Moratorium.

**FIRST AUTHOR:** Sen. Miller

**FIRST SPONSOR:**

**BILL STATUS:** CR Adopted - 1<sup>st</sup> House

**FUNDS AFFECTED: X** GENERAL  
DEDICATED  
**X** FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) *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, or appeal a determination of, certain Medicaid overpayments made to the provider. The bill also changes the time frame that a provider has to repay an overpayment from 60 days to 300 days.

*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 and Certificate of Need:* 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. The bill also creates a certificate of need for a comprehensive care bed license that allows the Indiana State Department of Health to grant a license for a bed only if the county in which the beds are to be located has an occupancy rate of at least 90%. It sets forth certain exemptions from the certificate of need.

**Effective Date:** July 1, 2011.

**Summary of NET State Impact:** *Collections of Overpayments:* 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. For 2010, OMPP identified a collection rate of approximately 30% and a balance of overpayments of \$28 M.

(Revised) *Moratorium/Certificate of Need*: Expenditures related to the moratorium or the certificate of need for 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.

*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. Extension of the QAF would allow for the state to continue receiving \$19.6 M in funding to be used for the Medicaid Program. The provision allowing for the maximization of the amount the QAF collects and the change in the distribution of funds will result in additional state dollars for Medicaid of \$11.6 M for FY 2012, and \$18.5 M for each of FY 2013 and FY 2014.

**Explanation of State Expenditures:** (Revised) *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 300 days of receiving the notice. The provider may request a hearing and any subsequent appeals, but the overpayment must be repaid to the OMPP within 300 days. If it is subsequently determined that the provider was not overpaid, OMPP is required to return the amount of any 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 has reported that the overpayment balance is in excess of \$28 M and that the collection rate for all identified overpayments is less than 30%.

*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 than 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.

(Revised) *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 Pay Prior-Year Unreimbursed Nursing Facility Expenditures | 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 Pay Prior-Year Unreimbursed Nursing Facility Expenditures | \$ 13.0 M         | \$ 6.1 M          |                   |
| <b>Total</b>   | <b>\$ 144.4 M</b> | <b>\$ 144.4 M</b> | <b>\$ 144.4 M</b> |

*(Revised) Nursing Facility Bed Certificate of Need/Medicaid Certification Moratorium:* The bill further extends the existing moratorium on certification of new nursing facility beds for participation in the Medicaid program and establishes a certificate of need program on the construction and licensure of new or converted comprehensive care health facilities with some exceptions, until June 30, 2014. The bill would provide exceptions: (1) for facilities that have physically begun significant construction of a facility before December 31, 2011; (2) 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 (3) for facilities that are currently licensed facilities that are transferring or relocating an existing facility. This provision does not apply to the conversion of hospital acute care beds to Medicare/Medicaid certified comprehensive care beds.

The State Department of Health has reported in the past that extending the administration of a certificate of need program 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:** *(Revised) Nursing Facility Bed Certificate of Need Program:* Depending on the number of applications that might now be considered, ISDH plan review or license fee revenues could be collected for any new beds or facilities due to the certificate of need program. 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.

| Fiscal Year   | Total QAF Collections | State Benefit From |              |                   |
|---|-----------------------|--------------------|--------------|-------------------|
|   |                       | 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.

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