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Senata Bill 348 (Substitute S-1 as passed by the Senata)  
Sponsor: Senata Peter MacGregor  
Committee: Health Policy and Human Services

Date Completed: 9-26-19

### **RATIONALE**

The Michigan Medicaid program reimburses nursing facilities in the State for Medicaid-approved services that are provided in the Michigan Medicaid Provider Manual. To receive reimbursement, each facility must submit to the Michigan Department of Health and Human Services (DHHS) an annual cost report that contains the expenses the facility incurred, and an accounting for those expenses. A facility must submit a report within five months after the end of the facility's fiscal year. The State audits the reports to ensure the facility's reimbursements have been for Medicaid-eligible expenses. After completing an audit, the DHHS will issue a "settlement", which is the process of reconciling a cost report with the audit. Settlements may require a facility to repay the State for costs that the audit determines are not eligible for reimbursement. Reportedly, the DHHS has issued new interpretations of existing policy within the Michigan Medicaid Provider Manual, which does not allow a facility the time to adjust the services it provides to Medicaid patients and makes compliance with annual cost report and auditing requirements difficult. Accordingly, it has been suggested that the DHHS provides a prospective effective date for new interpretations of existing Medicaid provider policy affecting nursing facility Medicaid cost reports.

### **CONTENT**

The bill would amend the Social Welfare Act to specify that, except as provided by the bill, if the Department of Health and Human Services issued a new interpretation of existing Medicaid provider policy directly affecting nursing facility Medicaid cost reports, that change in policy would have to have a prospective effective date. 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" means 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 Department 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

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senata Fiscal Agency. The Senata Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

According to testimony before the Senata Committee on Health Policy and Human Services, rule promulgation for the Michigan Medicaid Provider Manual takes between 90 to 120 days. This timeline offers a nursing facility ample time to adjust the Medicaid-approved services that it provides to comply with the change of coverage. However, reinterpretations of the Michigan

Medicaid Provider Manual take less time, approximately two to four weeks, and require a nursing facility to comply retroactively. The process of reinterpretation does not offer sufficient time for a nursing facility to adjust the services that it provides, which affects the settlement that a facility must reconcile with the DHHS after the cost report and auditing process. The bill would require the DHHS to include a prospective effective date when issuing new policy interpretations of existing policy affecting nursing facilities. This change could ensure that a nursing facility has time to adjust the services it provides to Medicaid patients without negatively affecting the cost report and auditing process.

### **Opposing Argument**

Currently, if the DHHS wants to clarify a policy, it accomplishes this through the rule promulgation process. This process takes between 90 to 120 days to complete. In the case of a reinterpretation, which takes two to four weeks, the DHHS will issue letters with the reinterpretation to nursing facilities. The rule promulgation process takes considerably longer to complete than the reinterpretation process. The bill's language could be understood to require the DHHS to promulgate a rule for every reinterpretation because it currently does not promulgate reinterpretations, but only issues the reinterpretations for decisions made by auditors in the cost report and auditing process. If this occurred, instead of the current two-to-four-week reinterpretation process, then the system would become less efficient and cumbersome. In addition, the DHHS could remedy this problem through administrative rules, which could avoid the concerns of conflicting interpretations of the language in the bill.

Legislative Analyst: Tyler VanHuyse

### **FISCAL IMPACT**

The bill would bar retrospective Medicaid provider policies that affected nursing facility cost reports unless those policies were required to be retrospective as part of a Federal Medicaid policy approval process or required by State law, Federal law, or judicial ruling. This would lead to potential unrealized retrospective positive and negative fiscal impacts. The nursing facility rate setting process creates an effective time limitation on retrospective policies and there are few significant Medicaid policy changes that are not tied to Federal policy determinations or legal restrictions; therefore, the number and magnitude of these now barred retrospective policy changes would be limited. As such, the bill would have a minor fiscal impact.

Fiscal Analyst: Steve Angelotti

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.