Legislative Analysis

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REVISE HEALTH FACILITY FEES AND REGULATION, EXTEND NURSING HOME QUALIFIED ASSURANCE ASSESSMENT PROGRAM (QAAP), INCREASE HOSPITAL QAAP RETAINER, AND CREATE AMBULANCE QAAP

House Bill 4447 (H-2) with proposed amendment 1B
Sponsor: Rep. Pscholka
Committee: Appropriations

House Bill 4444 (H-1)
Sponsor: Rep. Afendoulis
Committee: Appropriations

Complete to May 27, 2015

SUMMARY:

Health Facility Regulation

House Bills 4447 and 4444 would amend the Public Health Code of 1978 and the Mental Health Code of 1974, respectively, to adjust the licensure fees levied on regulated health facilities, agencies, and programs (i.e., hospitals, freestanding outpatient facilities, nursing homes, hospice agencies and residences, substance use disorder services, clinical laboratories, psychiatric hospitals or units, and partial hospitalization psychiatric programs) resulting in an overall increase in revenue generated from such facilities. The fees were most recently adjusted variously between 1981 and 1996 and are collected by the Bureau of Health Care Services (BHCS) within the Department of Licensing and Regulatory Affairs (LARA) for expenditure on the administration, implementation, and enforcement of Articles 6 and 17 of the Public Health Code and Chapter 1 of the Mental Health Code. Additionally, licensure renewal cycles, and thus fee collections, for all regulated health facilities, agencies, and programs would be made uniformly annual.

See the attached table for detailed information concerning the fees affected by the bills.

Furthermore, the bills would alter the inspection requirements for all regulated health facilities, agencies, and programs; extending periodic inspections from either annual or biennial to a uniformly triennial schedule (excluding substance use disorder services) and expanding the eligibility to waive periodic inspections from hospitals to accredited hospitals, freestanding outpatient facilities, hospice agencies and residences, and nursing homes (however, currently there is no accrediting organization for nursing homes).

HB 4444 would also eliminate the licensure of, and fees collected from, psychiatric partial hospitalization programs that provide nonresidential treatment for individuals who do not require continuous inpatient mental health care. Since 2002, these programs have not required a Certificate of Need to operate and, consequently, are no longer subject to

standards promulgated by the Michigan Certificate of Need Commission which constituted much of the licensure criteria. There are approximately 31 of these programs within the state, although the BHCS did not perform inspections of these programs during FY 2013-14.

HB 4447 would also remove several sections and other specific language from the Public Health Code pertaining to the licensure of clinical laboratories to recognize the enactment of the Federal Clinical Laboratory Improvement Amendments of 1988, codified as 40 CFR 493, which created a federal clinical laboratory certification program. In response the state ceased licensing clinical laboratories and collecting statutory fees in 1992 and began receiving federal grants to reimburse the state's costs of determining whether clinical laboratories are in compliance with federal health and safety standards and conditions. These changes are designed to amend statute to more accurately reflect actual departmental practices.

Lastly, the bills would establish a four year sunset on the all of the licensure fees (both the increased and existing amounts), which would be eliminated on September 30, 2019.

QAAP-Related Revisions

House Bill 4447 would also make a number of revisions related to the state's quality assurance assessment (QAAP) programs.

First, the bill would extend the current October 1, 2015 sunset by 4 years to October 1, 2019 on assessing and collecting the quality assurance assessment program (QAAP) on nursing homes and hospital long-term care units under Section 20161 of the Public Health Code (MCL 333.20161).

Second, the bill would revise provisions related to the state's hospital QAAP to authorize an additional $92.9 million state retainer revenue on a one-time basis in FY 2015-16.

Third, the bill would authorize the creation of an ambulance QAAP. This QAAP would be used to provide reimbursement to Medicaid ambulance providers. The Department of Community Health (now merged into the Department of Health and Human Services) could promulgate rules to provide for the structure of the program and level of the assessment. The department would be required to implement these provisions in a manner that complied with federal requirement necessary to ensure that the assessment qualified for federal matching funds. Total annual collections under the QAAP could not exceed $6.0 million, and the assessment would sunset on October 1, 2018, or in the event that the assessment was no longer eligible for federal matching funds.

Effective Date

The bill would become effective on October 1, 2015.

BACKGROUND:

Health Facility Regulation

The adjustments to licensure fees and alteration of regulatory requirements under the bills are substantially similar to those proposed by the BHCS within the annual report required by boilerplate Sec. 509 of 2014 PA 252; although, the per bed licensure fee levied on nursing homes would be $3 per bed in excess of 100 bed rather than $5 per every bed. LARA has submitted this report each year since FY 2011-12, which includes explanations and statistics pertaining to the costs of state licensure of regulated health facilities, agencies, and programs and recommendations for changes to licensure fees, inspection schedules, and other regulatory requirements.[1]

The BHCS currently employs 4.0 FTEs to inspect hospitals, freestanding outpatient facilities, hospice agencies and residences, substance use disorder services, psychiatric hospitals or units, and partial hospitalization psychiatric programs, while the inspection of nursing homes is performed by staff concurrently during federal certification surveys.

According to the boilerplate report for FY 2014-15 (reporting on data pertaining to FY 2013-14), the BHCS reported that annualized revenues generated by licensure fees totaled $295,373, while expenditures made to support state licensure and inspection activities totaled $2.2 million for an estimated annual shortfall of $1.9 million. Currently, this shortfall is primarily supported with money from the GF/GP, including $530,000 appropriated explicitly for the licensure and inspection of freestanding surgical outpatient facilities.

Furthermore, the BHCS is not in compliance with statutory requirements pertaining to the frequency of inspections of health facilities, agencies, and programs. According to a performance audit published by the Auditor General in March of 2014, the BHCS was not effective or only moderately effective in licensing and inspecting health facilities, agencies, and programs because it did not conduct all statutorily-required inspections.[2] Throughout FY 2013-14, the BHCS continued to fail to perform all of the statutorily-required inspections for hospitals, psychiatric hospitals or units, psychiatric partial hospitalization programs, substance use disorder services, and clinical laboratories. The BHCS indicates that it lacks sufficient resources to perform all statutorily-required inspections.[3]

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[1] These reports can be accessed at LARA's "Legislative Reports" webpage by following the links to each fiscal year that the report was required by boilerplate (FY 2011-12 through FY 2014-15): http://www.michigan.gov/lara/0,4601,7-154-10573_11550---,00.html.

[2] The performance report can be access at http://audgen.michigan.gov/~audgenmi/finalpdfs/13_14/r641045014.pdf#search=health.

[3] However, beginning in FY 2014-15, the BHCS aggressively promoted utilization of the inspection waivers statutorily-permitted for accredited hospitals permitted by MCL 333.20155(11) and subsequently, a significant majority of hospitals have applied and been approve for such waivers.

Nursing Home QAAP

Public Act 303 of 2002, as amended, established a QAAP on nursing homes and hospital long-term care units at an amount resulting in not more than 6.0% of total industry revenues. The QAAP for each individual nursing home and hospital long-term care unit is based on the number of non-Medicare patient days-of-care provided during the immediately preceding year.

Section 20161 directs the Department of Community Health to use the QAAP revenue and all federal Medicaid matching funds attributed to the QAAP as follows:

- To finance increased Medicaid nursing home reimbursement payments/per diems.
- To maintain increased Medicaid payments/per diems for each year in which the QAAP is assessed and collected.
- To provide for a state retainer equal to 13.2% of the federal Medicaid funds generated by the QAAP, and to appropriate those funds to offset an identical amount of GF/GP appropriated for Medicaid long-term care services.

The sunset on this QAAP was most recently extended in 2011.

FISCAL IMPACT:

Health Facility Regulation

The bills would increase current revenue levels collected by the BHCS, within LARA, to the extent that the BHCS would collect additional revenue generated by the adjustments to application, base, and per bed licensure fees. Revenue generated by these fees is deposited into the Health Systems Fees Fund and expended to administer, implement, and enforce Articles 6 and 17 of the Public Health Code and Chapter 1 of the Mental Health Code. LARA estimates that the total annualized additional revenue generated by the increase of the licensure fee under the bills would be approximately **$1.1 million**.[4]

The BHCS anticipates expending a portion of the additional fee revenue to hire between 3.0 and 5.0 FTEs to supplement its licensure and investigative staff and support efforts to comply with statutory requirements, as amended by the bills. The BHCS estimates that the personnel (e.g., salary, insurance, retirement) and ancillary costs (e.g., travel, supplies and materials, information technology) associated with each FTE as an inspector is $135,000 per annum, for a total increased annual costs ranging between $405,000 and $675,000.

The State Budget Office and Conference Committee on LARA assumed the collection of this revenue in the drafting of the FY 2015-16 Executive Recommendation and the FY 2015-16 appropriation act for LARA, respectively. Additionally, the Conference

[4] This amount is $204,819 less than the increased revenues estimated to be generated under the fee amounts proposed by the BHCS and assumed within the FY 2015-16 Executive Recommendation because under HB 4447 (H-2) the per bed licensure fee levied on nursing homes from would be $3 per bed in excess of 100 bed rather than $5 per every bed as recommend by LARA.

Committee reduced $530,000 GF/GP for the BHCS to license and inspect freestanding surgical outpatient facilities, pursuant to Sec. 510 of Article XIII of 2014 PA 252, which has been included since FY 2012-13 to supplement insufficient licensure fee revenue as reported by the BHCS in March 2012. The Conference Committee assumed that this reduction in GF/GP authorization would be offset with the additional fee revenue.

Furthermore, the amendments made by the bills that would extend periodic inspections to a triennial (excluding substance use disorder services), expand eligibility for inspection waivers, and eliminate licensure of psychiatric partial hospitalization programs would result in cost savings for the BHCS and, as a result, the BHCS would be able to expend its resources to more effectively comply with statutory requirements, as amended by the bills, pertaining to the regulation of health facilities, agencies, and programs. The BHCS estimates that if these changes are not enacted, the BHCS would need to hire, at a minimum, an additional 5.0 FTEs, in addition to the 3.0 to 5.0 new FTEs mentioned above, to comply with statutorily-required inspections that are not currently being satisfied; accordingly, the BHCS estimates that the minimum additional resources necessary to comply with current statutory requires is approximately $675,000 per annum, but that these costs would be avoided with the enactment of the bills.

Nursing Home QAAP

Extending the current nursing home QAAP by 4 years to October 1, 2019 would have no fiscal impact on the state and local units of government as it would permit current QAAP assessments and current Medicaid rates to continue into future fiscal years.

If the nursing home QAAP sunset is not extended, however, state costs for Medicaid long-term care services would increase by $56.3 million from the loss of state retainer savings. Also, while nursing homes and hospital long-term care units would no longer be assessed $250.0 million in QAAP, they would no longer receive $370.0 million in federal Medicaid matching funds, resulting in a net loss of $120.0 million.

Hospital QAAP Retainer

The additional increase of $92.9 million on a one-time basis in FY 2015-16 would reduce state GF/GP costs by $92.9 million by instead utilizing QAAP revenue currently being provided to hospitals through the state's Medicaid program. This GF/GP savings is included in the conference report for the FY 2015-16 Community Health budget.

Ambulance QAAP

The creation of the ambulance QAAP would result in ambulance providers in the state being assessed an estimated $4.0 million per year. This revenue would be utilized to draw down federal Medicaid match funds and increase Medicaid reimbursements to those providers by an estimated $8.6 million, resulting in a net benefit of $4.6 million. The state would also realize a benefit of $1.0 million in retainer revenue, which would reduce

state GF/GP costs by the same amount. This GF/GP savings is included in the conference report for the FY 2015-16 Community Health budget.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

Adjustments of Fees Levied on Regulated Health Facilities

Deposited into the Health Systems Fees Fund

House Bill	Fee	Est. Number of Instances Fee is or would be Levied (Annualized)	Most Recent Year Fee was Adjusted by Legislature	Current Law			Subcommittee Recommendation				
				FY 14-15 Fee Amount (Annualized)	FY 14-15 Revenue (Annualized)	Frequency that Fee is Levied	FY 15-16 Fee Amount (Annualized)	Est. FY 15-16 Revenue (Annualized)	Change in Revenue (cf. FY 14-15)	Percent Change in Revenue (cf. FY 14-15)	Frequency that Fee is Levied
HB 4447 (H-2)	Hospital License Fee (Base)	169	NA	$0.00	$0	NA	$500.00	$84,500	$84,500	--	Annual
	Hospital License Fee (per Bed)	26,093	1981 PA 76	$8.28	$216,050	Biennial	$10.00	$260,930	$44,880	20.8%	Annual
	Freestanding Surgical Outpatient Facility License Fee	131	1981 PA 76	$238.00	$31,178	Annual	$500.00	$65,500	$34,322	110.1%	Annual
	Nursing Home/Long-Term Care Facility License Fee (Base)	451	NA	$0.00	$0	NA	$500.00	$225,500	$225,500	--	Annual
	Nursing Home/Long-Term Care Facility License Fee (per bed (CL) / per Bed > 100 (HB))	46,719 (CL) / 9,592 (HB)	1981 PA 76	$2.20	$102,782	Annual	$3.00	$28,776	($74,006)	-72.0%	Annual
	Hospice Residence License Fee (Base)	17	1996 PA 267	$200.00	$3,400	Annual	$500.00	$8,500	$5,100	150.0%	Annual
	Hospice Residence License Fee (per Bed)	246	1996 PA 267	$20.00	$4,920	Annual	$5.00	$1,230	($3,690)	-75.0%	Annual
	Hospice Agency License Fee	126	NA	$0.00	$0	NA	$500.00	$63,000	$63,000	--	Annual
	Substance Use Disorder Services License Fee	1,275	NA	$0.00	$0	NA	$500.00	$637,500	$637,500	--	Annual
	Clinical Laboratory License Fee	0	1984 PA 376	$475.00	$0	Never	$0.00	$0	$0	--	Never
	Initial Health Facility or Agency Licensure Application Fee	10	NA	$0.00	$0	NA	$2,000.00	$20,000	$20,000	--	Continuous

House Bill	Fee	Est. Number of Instances Fee is or would be Levied (Annualized)	Most Recent Year Fee was Adjusted by Legislature	Current Law			Subcommittee Recommendation				
				FY 14-15 Fee Amount (Annualized)	FY 14-15 Revenue (Annualized)	Frequency that Fee is Levied	FY 15-16 Fee Amount (Annualized)	Est. FY 15-16 Revenue (Annualized)	Change in Revenue (cf. FY 14-15)	Percent Change in Revenue (cf. FY 14-15)	Frequency that Fee is Levied
HB 4444 (H-1)	Psychiatric Hospital/Unit License Fee (Base)	59	1995 PA 290	$300.00	$17,700	Biennial	$500.00	$29,500	$11,800	66.7%	Annual
	Psychiatric Hospital/Unit License Fee (per Bed)	2,311	1995 PA 290	$3.75	$8,666	Biennial	$10.00	$23,109	$14,443	166.7%	Annual
	Psychiatric Partial Hospitalization Program License Fee (Base)	30	1995 PA 290	$300.00	$9,000	Biennial	$0.00	$0	($9,000)	-100.0%	NA
	Psychiatric Partial Hospitalization Program License Fee (Base)	1,050	1995 PA 290	$3.75	$3,938	Biennial	$0.00	$0	($3,938)	-100.0%	NA
TOTAL					**$397,634**			**$1,448,045**	**$1,050,411**	**264.2%**	