

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 3, 2007

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: SB1481 by Brimer (Relating to payments to nursing facilities based on TILE classifications assigned to residents of those facilities.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1481, Committee Report 1st House, Substituted: a negative impact of (\$2,859,757) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$1,432,579)
2009	(\$1,427,178)
2010	(\$1,427,892)
2011	(\$1,427,892)
2012	(\$1,427,892)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>GR MATCH FOR MEDICAID 758</i>	Probable (Cost) from <i>FEDERAL FUNDS 555</i>	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE FUND 1</i>	Probable Revenue Gain/(Loss) from <i>FEDERAL FUNDS 555</i>
2008	(\$960,663)	(\$1,508,058)	(\$471,916)	(\$684,627)
2009	(\$955,262)	(\$1,484,459)	(\$471,916)	(\$655,627)
2010	(\$955,976)	(\$1,483,745)	(\$471,916)	(\$655,627)
2011	(\$955,976)	(\$1,483,745)	(\$471,916)	(\$655,627)
2012	(\$955,976)	(\$1,483,745)	(\$471,916)	(\$655,627)

Fiscal Year	Change in Number of State Employees from FY 2007
2008	8.0
2009	8.0
2010	8.0
2011	8.0
2012	8.0

Fiscal Analysis

The bill amends Chapter 531 of the Texas Government Code by adding Section 531.099 and 531.0991 regarding TILE (Texas Index for Level of Effort) Reimbursement Payments stating the Health and Human Services Commission (HHSC) shall ensure that the rules governing reimbursement payments to nursing facilities based on TILE classifications do not deny or reduce payments to a nursing facility as a result of clerical, technical, or non-medical errors made on commission claims form. The bill also provides that a payment may not be recouped or withheld from a nursing facility until the earlier of the date all administrative appeals are exhausted or waived, or the date the executive commissioner issues a final order following a proposal for decision from the State Office of Administrative Hearings, or the first anniversary of the date the nursing facility filed the administrative appeal of the TILE classification and permit the nursing facility to identify documentation errors related to reimbursement payments based on TILE classifications and provide a process by which the nursing facility may refund any money inappropriately paid as a result of an identified documentation error.

Section 531.0991 requires the Commission to review and make a determination on the request for reconsideration of a TILE classification not later than the 30th day after the date the Commission receives the reconsideration request. If the Commission does not make a determination by the 30th day, the original TILE classification originally determined by the Nursing Facility or Hospice provider is considered granted. The TILE classification and the associated daily reimbursement rate is assigned to the resident retroactively to the effective date of the incorrect TILE classification.

The HHSC indicates that the entire proposed legislation is in conflict with and violates federal law. According to HHSC, the proposed bill violates the Deficit Reduction Act, the Improper Payment Information Act, and can cause the state of Texas to be assessed an overall high error rate due to the state paying vendors for claims to have been found in error.

Methodology

HHSC estimated the Utilization Review section of the Office of Inspector General would need an additional six nurse positions and two program specialists in order to handle the estimated 15-20 percent increase in workload related to reconsiderations. HHSC estimated fiscal year 2008 costs totaled \$684,627 in All Funds (including \$125,231 in fringe benefits) and 8 FTEs with \$256,838 being General Revenue with costs for 2009 through 2012 to be \$655,627 in All Funds including \$242,338 in General Revenue.

HHCS indicated that passage of the bill could impact the commission's ability to recover funds identified as inappropriate payments as mandated by House Bill 2292 (Seventy-eighth Legislature, RS) and the federal Deficit Reduction Act (DRA) of 2005. The state would remain liable to the federal government for the amount of the inappropriate payments. The HHSC estimated loss of recoveries are included above.

The estimate does not include amounts out of general revenue that the state would need to pay or return to the federal government for the federal portion of the inappropriate payment.

The DADS estimate indicated that the HHSC Utilization Review nurse reviewers in the Office of Inspector General received 913 requests for TILE reconsiderations in FY 2006, that the nurse reviewer's initial re-classification was upheld in 75 percent of the requests, which equals 685 cases and that approximately 25 percent of the cases would not be completed within the 30 day time frame.

The DADS estimate included 171 cases that would result in a higher cost TILE until at least the next TILE classification. Of the 913 TILE re-classification requests, 397 had an original TILE 202. HHSC provided a breakdown of the TILE changes for this group, which showed an average change of \$57.17 per patient day for the estimate. The DADS estimated cost calculation used was 171 clients times 6 months times 30.416 days per month times \$57.17 per patient day.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission, 539 Aging and Disability Services,
Department of

LBB Staff: JOB, SD, CL, PP, ML