LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 30, 2017

TO: Honorable Richard Peña Raymond, Chair, House Committee on Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB2766** by Sheffield (Relating to the creation and administration of a reinvestment allowance for certain long-term care facilities.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2766, Committee Report 1st House, Substituted: a negative impact of ($831,742,402) through the biennium ending August 31, 2019 assuming a full-year cost associated with the requirement to make retroactive reimbursements to facilities prior to collection of the reinvestment allowance.

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
2018	($831,742,402)
2019	$0
2020	$0
2021	$0
2022	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from *General Revenue Fund* 1	Probable (Cost) from *New Reinvestment Allowance Trust Fund outside Treasury*	Probable (Cost) from *Federal Funds* 555	Probable Revenue Gain from *New Reinvestment Allowance Trust Fund outside Treasury*
2018	($831,742,402)	$0		$0
2019	$0	($361,861,914)	($486,351,347)	$361,861,914
2020	$0	($365,611,002)	($492,228,045)	$365,611,002
2021	$0	($367,383,117)	($494,613,873)	$367,383,117
2022	$0	$0	$0	$0

Fiscal Analysis

The bill would require the Health and Human Services Commission (HHSC) to impose a reinvestment allowance on convalescent and nursing facilities licensed under Health and Safety Code, Chapter 242. The reinvestment allowance would be calculated as the product of an amount established by the executive commissioner of HHSC and a facility's non-Medicare patient days. The amount established by the executive commissioner could not exceed the amount sufficient to produce annual revenues from all facilities not exceeding the maximum amount allowable under certain federal requirements. The bill would limit the amount of administrative penalties that could be collected related to the reinvestment allowance.

The bill would establish the nursing facility reinvestment allowance trust fund as a trust fund to be held by the comptroller outside of the state treasury and administered by HHSC as trustee. The bill would require HHSC to deposit any reinvestment allowance collected and federal matching funds received to the trust fund. HHSC would be authorized to use money in the trust fund to pay any HHSC cost to develop and administer systems for managing the reinvestment allowance, reimburse the Medicaid share of the reinvestment allowance as an allowable cost in the Medicaid daily rate, and increase Medicaid reimbursement rates paid to facilities. The bill would require HHSC to allocate 50 percent of funds used to increase Medicaid reimbursement rates based on the total rating of the Centers for Medicare and Medicaid Services (CMS) five-star quality rating system. HHSC would be required to devise a formula to increase Medicaid reimbursement rates, which would include a phase-in of the allocation based on CMS's five-star quality rating system beginning on September 1, 2018. The bill would require HHSC to submit to certain entities and publish on its website an annual report related to the nursing facility reinvestment allowance program. The bill would require HHSC to prepare and deliver to certain entities an evaluation of the nursing facility reinvestment allowance program by November 1, 2020.

The subchapter, as added by the bill, would expire August 31, 2021. HHSC would be required to seek any necessary federal waiver or authorization to implement the provisions of the bill and would be authorized to delay implementation until such waiver or authorization was received. HHSC would be prohibited from imposing a reinvestment allowance until a Medicaid state plan amendment to increase Medicaid rates for certain long-term-care facilities is approved and facilities were retroactively compensated for services provided beginning with the effective date of the bill. HHSC would be required to discontinue the reinvestment allowance if they reduced Medicaid reimbursement rates, including rates increased due to funding from the nursing facility reinvestment allowance trust fund, below rates in effect on September 1, 2017.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either within or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Methodology

According to HHSC, assuming a reinvestment allowance based on six percent of gross receipts would yield an estimated $359.1 million in fiscal year 2018, $361.9 million in fiscal year 2019, $365.6 million in fiscal year 2020, and $367.4 million in fiscal year 2021. It is assumed the fiscal year 2018 amount would not be collected due to time needed to establish the trust fund and receive any necessary federal approval to implement the provisions of the bill. Because the bill requires retroactive reimbursement of facilities back to the effective date of the bill before the reinvestment allowance can be collected, it is assumed that the amount that would have been collected in fiscal year 2018 will be reimbursed with General Revenue Funds. Additionally, it is assumed that federal matching funds will not be available for the period prior to federal approval, but that the amount of federal funds that would have been drawn will also be reimbursed with General Revenue Funds in order to pay the same rate that will be reimbursed once the reinvestment allowance is established. The total cost to General Revenue Funds is estimated to be $831.7 million in fiscal year 2018 and is assumed to include any administrative costs. If the effective date of the bill is prior to September 1, 2017 then the cost to General Revenue Funds in fiscal year 2018 would be higher. If it takes less than a year to receive necessary approvals and establish the trust fund, then the cost to General Revenue Funds would be lower; if it takes longer, the cost would be higher. In fiscal years 2019 through 2021 it is assumed that the entire amount collected will be used to draw federal matching funds to reimburse facilities and pay any administrative costs. It is assumed that any amount used to reimburse Medicaid costs associated with paying the fee would be deposited back into the trust fund along with federal matching funds and those amounts are part of the total estimated revenue to the trust fund.

Local Government Impact

According to the Texas Health Care Association (THCA), no fiscal impact to local government is anticipated.

Source Agencies: 529 Health and Human Services Commission, 304 Comptroller of Public Accounts

LBB Staff: UP, KCA, LR, SD, JGA, LCO