# LEGISLATIVE BUDGET BOARD
# Austin, Texas

## FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

## April 12, 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.), **As Introduced**

The fiscal implications of the bill cannot be determined at this time, but a significant fiscal impact to the state would be anticipated. Insufficient information is available to calculate a specific cost.

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 reimburse the federal share of the reinvestment allowance as a pass-through in the rate, to increase Medicaid reimbursement rates paid to facilities, and to provide direct care staff programs related to quality incentives and quality metrics. HHSC would be required to devise a formula to increase Medicaid reimbursement rates.

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 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 trust fund, below rates in effect on September 1, 2017.

The bill would be effective immediately with a vote of two-thirds of all members elected to each house; otherwise, it would be effective September 1, 2017.

The fiscal impact of the bill cannot be determined at this time. Most of the requirements of the bill would be funded from the nursing facility reinvestment allowance trust fund and would have no cost to state funds, including General Revenue. Insufficient information is available to estimate the amount of funds that would be collected from facilities and the amount of federal matching funds that would be deposited to the trust fund. Based on the provisions of the bill, any amount collected would be expended to implement the provisions of the bill. There could be administrative costs associated with implementing provisions of the legislation that would not be an allowable use of funds in the nursing facility reinvestment allowance trust fund and would therefore have a cost to state and federal funds, including General Revenue. These administrative costs may include additional staff to administer the requirements of the bill, system-related technology costs, and increased administrative reimbursement to managed care organizations related to providing the pass-through payments to facilities. Additionally, the requirement to retroactively compensate facilities for the period from the effective date of the bill until the state plan amendment is received could be interpreted as being funded with state funds, including General Revenue, since there would be no funds in the trust fund to do so upon approval of the state plan amendment. Federal matching funds also may not be available for the retroactive compensation, in which case the entire cost would be the responsibility of the state. Since the amount of the rate increase required by the bill cannot be determined and the length of time for which retroactive compensation might be necessary is unknown, the fiscal impact cannot be determined.

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.

## Local Government Impact

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

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

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