



**House
Legislative
Analysis
Section**

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THE APPARENT PROBLEM:

In 1988, the legislature amended the Certificate of Need Act within the Public Health Code to allow small rural hospitals (those with under 100 licensed beds) in Michigan to participate in the federal "swing bed" program under which up to ten beds in a hospital can be used for patients who have been discharged from acute care and for whom places cannot be found in a nursing home or long-term care unit located within a 50-mile radius of home. These short-term nursing care programs were seen as a solution to a two-pronged problem facing rural hospitals: low occupancy rates and difficulty in placing patients in skilled nursing home beds after discharge. Patients cannot be admitted to the swing bed program unless a physician determines it is medically necessary. Patients must be transferred to a nursing home bed when one becomes available. About 20 Michigan hospitals are said to be participating. The state law says a hospital cannot charge for a length of stay in a swing bed exceeding 20 days, which is the number of days of care fully covered by Medicare. Under federal law, however, Medicare will partially reimburse (by requiring co-pays) hospitals for stays up to 100 days in short-term nursing programs. The state health code does not permit reimbursement for these longer stays. Hospital officials, who note that only about eight percent of patients stay beyond 20 days, propose making the state law conform to federal law.

THE CONTENT OF THE BILLS:

Senate Bill 891 would amend the Public Health Code (MCL 333.22208 et al.) to remove the 20-day limit on reimbursement for a patient's stay in a short-term nursing care bed and instead prohibit a hospital from charging or recovering the cost of a patient's length of stay that exceeds what is permitted for post-hospital extended care under Title 28 of the federal Social Security Act. (Health officials say stays up to 100 days are permitted under federal law.) Senate Bill 892 would amend the Social Welfare Act to (MCL 400.109) permit a Medicaid-eligible person to receive nursing services in a short-term nursing care (or swing bed) program. (This means swing bed programs would be added to the list of facilities that Medicaid would reimburse for nursing home services.) Services would be provided to the extent found necessary by the attending physician "when the combined length of stay in the acute care bed and short term nursing care bed exceeds the average length of stay for Medicaid hospital diagnostic related group reimbursement." (This is understood to mean that the state-federal Medicaid program would only begin to reimburse hospitals for short-term nursing care after completion of the length of stay on which the Medicaid DRG reimbursement for the treatment prior to nursing care

SWING BED AMENDMENTS

Senate Bill 891 (Substitute S-2)
Sponsor: Sen. James A. Barcia

**Senate Bill 892 (Substitute S-1 with
House Committee amendments)**

Sponsor: Sen. John J.H. Schwarz

Senate Committee: Health Policy
House Committee: Public Health
First Analysis (6-14-90)

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was based and not after the end of the actual length of stay for that care. For example, if the Medicaid payment for a procedure was based on a four-day stay but the patient was discharged after two days to a nursing care bed, Medicaid would only begin to pay for that nursing care when the four days were up.)

Senate Bill 891 would also make several other changes in the short-term nursing care program. Currently the term "short-term nursing care" refers to care for a patient who has been discharged from an acute care bed. The bill would make the term refer to patients discharged or ready for transfer from a licensed hospital bed. It would also add county medical facilities to the list of institutions that must not be available if a swing bed is to be used. The act currently says that the 100-bed limit for participating in the swing bed program does not include beds used for newborns, psychiatric patients, and inpatient substance abuse patients. The bill would instead say the limit does not apply to beds excluded under the federal law. Other technical amendments would also be made referring to requirements of the federal law.

Senate Bill 891 would also: a) provide that a certificate of need is not required for a reduction in licensed bed capacity or services at a licensed site; and b) require that the Office of Rural Health (created by recent legislation) designate a certificate of need ombudsman to provide help to rural hospitals and communities and to act as an advocate for rural health concerns in the development of CON standards.

FISCAL IMPLICATIONS:

There would be additional costs to the state Medicaid program because that program would be expected to cover the co-pay for eligible patients in swing beds after the 20th day. The Department of Social Services in a draft analysis dated 5-1-90 says: "Medicare pays for the first 20 days of care and Medicaid would be required to pay the co-insurance of approximately \$74 for the next 80 days. This is about \$25 more than would be paid if the patient were in a nursing home. The number of potential days to be reimbursed is unknown." The Senate Fiscal Agency has estimated the cost of the two bills to Medicaid, using what it calls "worst case" assumptions, at \$9 million, with \$4.1 million from state general fund/general purpose monies. (5-15-90) Hospital officials, however, believe the impact will be negligible.

ARGUMENTS:

For:

The legislation would allow small, rural hospitals participating in the "swing bed" program to be reimbursed for short-term nursing bed stays beyond 20 days. The

S.B.s 891 & 892 (6-14-90)

federal law allows patients to stay in such beds for up to 100 days. Medicare fully covers the first 20 days and partially covers the remainder. State law limits the reimbursable number of days to 20. Hospital officials say that only a small number (about 8 percent) of patients stay beyond 20 days (and they on average stay only a little more than a week more) so the impact of the legislation is not large. For those eligible, this proposal would require Medicaid to cover the co-pay after 20 days. Patients could benefit by not having to be moved from one facility to another. The swing bed program, currently operating in about 20 hospitals in the state, applies only to small rural hospitals and benefits patients for whom there are no available nursing home beds within 50 miles. A patient can occupy a short-term nursing bed only with physician approval and must be transferred to a nursing home if space is available. The legislation would also designate the short-term nursing programs as locales where a Medicaid-eligible person (of any age) can receive nursing home services.

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Against:

A representative of the Office of Services to the Aging recommended to the House Public Health Committee that action on the bills be delayed until the current swing bed program has been fully evaluated. It is the agency's belief that "the increase in permitted lengths of stay from 20 to 100 days combined with Medicaid reimbursement risks the creation of yet another permanent form of institutional long term care." It is the agency's view that "it is time for us to commit to the further development of non-institutional long term care which has been shown to be the preference of an overwhelming majority of Michigan citizens who are clients or the family of clients, and which has been shown to be cost effective. People do not want to go to nursing homes even if they are housed under the aegis of a swing bed program in a hospital." Efforts are underway to evaluate the effects of the swing bed program and there should be no expansion until the results of the evaluation are available.

Against:

The bills will result in increased Medicaid expenditures by making that program pick up the co-pay for eligible swing bed patients after their first 20 days in short-term nursing care and by making them pay for care of other Medicaid-eligible patients that receive nursing care in swing beds. If these bills cause the swing bed program to grow, by offering a new reimbursement source, it could increase health costs overall.

Response: Hospital officials say the bills create no new eligible persons under Medicaid.

POSITIONS:

The Michigan Hospital Association supports the bills. (6-12-90)

The Office of Services to the Aging testified before the House Public Health Committee that action on the bills is premature. (6-7-90)

The Department of Social Services has indicated its opposition to the bills. (6-7-90)