

**FISCAL NOTE**  
 LEGISLATIVE FISCAL ANALYST ESTIMATE

| <b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)</b> |                     |                |                     |                |
|---|---------------------|----------------|---------------------|----------------|
|   | <b>FY 2023-24</b>   |                | <b>FY 2024-25</b>   |                |
|   | <b>EXPENDITURES</b> | <b>REVENUE</b> | <b>EXPENDITURES</b> | <b>REVENUE</b> |
| GENERAL FUNDS   | \$1,435,135         |                | \$1,913,513         |                |
| CASH FUNDS  |                     |                |                     |                |
| FEDERAL FUNDS   | \$2,031,373         |                | \$2,708,498         |                |
| OTHER FUNDS   |                     |                |                     |                |
| <b>TOTAL FUNDS</b>  | <b>\$3,466,508</b>  |                | <b>\$4,622,011</b>  |                |

**Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.**

This bill requires the Department of Health and Human Services (DHHS) to provide Medicaid reimbursement to a hospital at 150% of the statewide average nursing facility per diem rate when an individual meets the following conditions:

- a) Is enrolled in Medicaid,
- b) Has been admitted as an inpatient at such hospital,
- c) Is eligible for discharge after receiving care in such hospital,
- d) Requires nursing facility level of care upon discharge, and
- e) Is unable to be transferred to a nursing facility due to a lack of available nursing facility beds or a public guardian is unable to be appointed.

DHHS indicates that the bill does not provide sufficiently define if all admission criteria for a nursing home are required to be met in order to be reimbursed, what services may be billed on top of the swing bed rate, or if a hospital would be required to meet hospital licensing requirements or nursing facility licensing requirements. Furthermore, DHHS would be required to obtain federal approval for such reimbursements from the Centers for Medicare and Medicaid Services (CMS) which is not guaranteed. The following assumes approval by CMS is granted.

For purposes of estimating the fiscal impact of this bill DHHS defines swing bed as a placement which may be used by a hospital for acute or long-term care in a facility located in an area which is not designated as an urban by the federal census and that has less than 100 beds, excluding beds for newborns. DHHS also assumes the standards and criteria used by Medicare as swing beds fall under such rules. DHHS indicates that the 2023 swing bed rate was \$264.13 meaning 150% would be \$396.19. Currently, providers are not receiving and reimbursement for the specific type of care described by the bill. As such, the entire \$396.19 per patient-day would be new expenditures in the Medicaid Long Term Care program.

A similar program was implemented by the Division of Public Health within DHHS during the COVID-19 emergency which reimbursed hospitals to create capacity for patients that did not meet the inpatient level of care but were unable to be discharged to a facility to provide the appropriate level of care. The cost of that program was approximately \$14 million at a rate of \$1,200 per patient-day which amounted to a total of 11,666 patient-days covered. Assuming the same number of patient-days, 11,666 days, at a rate of \$396.19 per patient-day, DHHS indicates the bill would yield an annual total cost of \$4,622,011 (41.4% GF and 58.6% FF which is consistent with the Federal Medical Assistance Percentage, assuming the plan is approved by CMS). The fiscal impact assumes a start date of October 1, 2023. There is no basis to disagree with such an estimate.

| <b>ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY &amp; POLT. SUB. RESPONSE</b>   |              |       |  |                       |
|--|--------------|-------|--|-----------------------|
| LB:  | 227          | AM:   | AGENCY/POLT. SUB: Nebraska Department of Health & Human Services |                       |
| REVIEWED BY:   | Ann Linneman | DATE: | 2-7-2023   | PHONE: (402) 471-4180 |
| COMMENTS: The Nebraska Department of Health and Human Services' analysis and estimate of fiscal impact to the department appears reasonable. |              |       |  |                       |

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

State Agency or Political Subdivision Name:(2) Department of Health and Human Services

Prepared by: (3) John Meals

Date Prepared 2-7-2023

Phone: (5) 471-6719

|                      | <u>FY 2023-2024</u> |                | <u>FY 2024-2025</u> |                |
|----------------------|---------------------|----------------|---------------------|----------------|
|                      | <u>EXPENDITURES</u> | <u>REVENUE</u> | <u>EXPENDITURES</u> | <u>REVENUE</u> |
| <b>GENERAL FUNDS</b> | \$1,435,135         |                | \$1,913,513         |                |
| <b>CASH FUNDS</b>    |                     |                |                     |                |
| <b>FEDERAL FUNDS</b> | \$2,031,373         |                | \$2,708,498         |                |
| <b>OTHER FUNDS</b>   |                     |                |                     |                |
| <b>TOTAL FUNDS</b>   | \$3,466,508         | \$0            | \$4,622,011         | \$0            |

Return by date specified or 72 hours prior to public hearing, whichever is earlier.

**Explanation of Estimate:**

The bill mandates that the state shall provide Medicaid reimbursement to a hospital at one hundred fifty percent of the statewide average nursing facility per diem rate for an individual when the individual meets certain criteria outlined in the bill.

The services provided to such individual shall be custodial in nature for which federal financial participation is approved. Such hospital shall notify the Department of Health and Human Services (DHHS) that it is participating as a swing bed hospital under the medical assistance program. In 2023 the swing bed rate was \$264.13. One hundred fifty percent of the statewide average of the current swing bed daily rate would be \$396.19.

For purposes of this subsection, swing bed means a bed which may be used by a hospital for acute or long-term care in a facility located in an area which is not designated as urban by the United States Bureau of the Census and that has up to one hundred beds excluding beds for newborns and intensive care inpatient units.

DHHS shall use standards and criteria used by the Medicare program. Swing bed requirements for the DHHS Division of Public Health (DPH) fall under the federal Medicare rules. DPH licenses hospitals but does not have a specific license for swing beds.

The bill as written does not adequately define if all admission criteria for a nursing home are required to be met to be reimbursed, what services may be billed on top of the swing bed rate, or if a hospital would be required to meet hospital licensing requirements or nursing facility licensing requirements.

The bill also mandates that the department shall obtain approval from the federal government to implement the reimbursement provisions. It is unknown if the requirements of the bill, as written, would be approved by the Centers for Medicare and Medicaid Services (CMS).

During 2022 the DPH implemented a COVID-19 emergency program that reimbursed hospitals to create capacity for patients that did not meet inpatient level of care but were unable to be discharged. The program was in response to the core issue identified in the bill – the lack of available nursing facility capacity for hospital discharge-eligible patients. This program’s cost was approximately \$14M at \$1,200 per patient-day or 11,666 patient-days. If the same number of patient-days was needed and using 150% of the 2023 swing bed daily rate or \$396.19, the annual cost to DHHS would be \$4,622,011. For purposes of this fiscal note, a start date of October 1, 2023, was used.<sup>3</sup>

PERSONAL SERVICES:

| POSITION TITLE            | NUMBER OF POSITIONS |       | 2023-2024          | 2024-2025          |
|---------------------------|---------------------|-------|--------------------|--------------------|
|                           | 23-24               | 24-25 | EXPENDITURES       | EXPENDITURES       |
| Benefits.....             |                     |       |                    |                    |
| Operating.....            |                     |       |                    |                    |
| Travel.....               |                     |       |                    |                    |
| Capital Outlay.....       |                     |       |                    |                    |
| Aid.....                  |                     |       | \$3,466,508        | \$4,622,011        |
| Capital Improvements..... |                     |       |                    |                    |
| <b>TOTAL.....</b>         |                     |       | <b>\$3,466,508</b> | <b>\$4,622,011</b> |