Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: http://legis.wisconsin.gov/lfb

February 21, 2022

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Substitute Amendment to Assembly Bill 874/Senate Bill 826: Reimbursement for Ambulance Services under the Medical Assistance Program

2021 Assembly Bill 874 and Senate Bill 826, as amended by Assembly Substitute Amendment 1/Senate Substitute Amendment 1, (hereafter, "the statutory amendment") are identical bills that would make two changes to reimbursement paid under the Medical Assistance (MA) program for ambulance services. Both changes create new mechanisms that would increase federal matching funds claimed by the state, resulting in increased reimbursement without increased GPR spending.

The substitute amendment was introduced on February 21, 2022, and makes the following changes relative to the bill and amendments as described in the Legislative Fiscal Bureau paper distributed February 18, 2022: (a) it incorporates the clarification made by Assembly Amendment 1/Senate Amendment 2 that any ambulance provider owned by a municipality or group of municipalities, regardless of whether that provider is organized as a nonprofit corporation, would be classified as a public provider under the bill and not subject to the assessment on private providers; (b) it incorporates the provisions introduced as Assembly Amendment 3 on February 18, 2022, which would guarantee that health plans (including MA managed care organizations) be held harmless for any state errors in the calculation of the supplements payable to private providers and prohibit private ambulance providers from increasing the rates they charge because of the assessment levied on them; (c) it removes the section creating a new appropriation for the payment of the supplement to private ambulance providers, instead including non-statutory language that would require the Department of Health Services (DHS) to request such an appropriation in its 2023-25 biennial budget request; and (d) in place of Assembly Amendment 2/Senate Amendment 1, which would have permitted DHS to expend money under the new appropriation for administrative costs, the substitute amendment would permit DHS to include such authority in its 2023-25 budget request and would permit DHS to submit a request to the Committee prior to the passage of the 2023-25 biennial budget to supplement any existing DHS appropriation for the purposes of paying administrative costs of the assessment. The remainder of this paper describes the bill as amended by

the substitute amendment.

BACKGROUND

Under current law, MA reimburses public and private ambulance providers for services rendered to individuals enrolled in the program. Payments are generally based on the intensity of services provided, as well as the type of vehicle used. In addition to the base payment rate, providers are reimbursed for mileage and for certain consumable supplies. As with most MA services, the state receives federal matching funds covering approximately 60% of these expenditures.

Currently, approximately 75% of reimbursements for ambulance services are paid to private ambulance companies that contract with local governments to provide services. The remaining 25% of services are delivered by public, government-owned ambulance services, such as fire departments that provide emergency medical services (EMS). Under current law, the Department of Health Services (DHS) makes supplemental payments to local governments with public ambulance departments, based on the number of ambulance trips made for MA beneficiaries. DHS adjusts the per-trip rate such that the supplemental payments total $5 million annually. As with other supplemental payments made under MA, the state is eligible to claim federal matching funds for these payments as well, again covering approximately 60% of the cost.

This supplement, however has no net effect on local governments or their EMS departments. Under provisions establishing the supplement, the Department of Revenue is required to reduce each municipality's shared revenue payment (under the county and municipal aid program) by an amount equal to the supplement that it receives. Although the local governments or EMS departments do not benefit from the supplement program, the state benefits from this arrangement since the supplement is partially paid with federal funds (approximately $3 million FED and $2 million GPR) while the offsetting $5 million shared revenue reduction is entirely GPR. That is, the state saves approximately $3 million GPR from this transaction.

SUMMARY OF THE SUBSTITUTE AMENDMENT

As amended by the substitute amendment, Assembly Bill 874/Senate Bill 826 would make two separate changes to MA reimbursement for ambulance services, one that applies only to publically-owned providers and one that applies only to private providers. The provision applying to publically-owned providers is identical in the bill as introduced and the substitute amendment.

For public providers, the substitute amendment would require DHS to implement a program to allow local governments to claim federal matching funds for certain local government costs attributable to MA patients that exceed the MA reimbursement they receive for ground emergency medical transportation. The federal Centers for Medicare and Medicaid Services (CMS) refers to such claims as certified public expenditures (CPE). The Department would be required to submit a Medicaid state plan amendment to CMS for approval and, if approved, make supplemental reimbursements to public ambulance providers in an amount equal to the federal matching funds. If CMS does not approve the state plan amendment, the Department would not pay the supplement.

For many public ambulance providers, the costs attributable to providing services to MA patients are greater than the reimbursement they receive. The CPE program would give public ambulance providers the option of documenting these unreimbursed costs and certifying to the state their total costs attributable to MA patients. DHS would then claim federal matching funds for the amount by which these public expenditures exceed the MA reimbursement, including payments under the $5 million supplement, the provider received. The substitute amendment requires DHS to pass through to the public ambulance provider the full amount of federal matching funds received.

Wisconsin's MA program currently uses the CPE model of reimbursement for several services where a local government agency is the certified provider of the service, including school-based services, county mental health services, and county-operated nursing homes. Several other states, including California, Florida, Indiana, and Massachusetts, have implemented CPE programs for ambulance services. As approved by federal regulators, these other states' CPE programs generally limit the total costs that can be claimed for federal matching to the average rate that would be paid by private insurers for the same service (the average commercial rate, or ACR).

Federal regulations limit CPE programs to public, government-owned ambulance services. For private ambulance providers, the substitute amendment would create a new provider assessment (commonly known as a "provider tax") on private ambulance providers, create a new segregated fund to receive the assessment revenue, and direct DHS to use the assessment revenue, along with associated federal matching funds, to supplement MA reimbursement paid to private ambulance providers. The substitute amendment does not grant DHS appropriation authority to expend the assessment revenue, but requires DHS to request that authority in the 2023-25 biennial budget.

The assessment would be a uniform percentage of every private ambulance provider's net patient revenues from emergency ambulance transports. Federal regulations limit provider assessments to 6% or less of net patient revenues. The substitute amendment would require that the assessment rate be set within one quarter of a percentage point of this federal maximum, thus between 5.75% and 6.0%. For the purposes of this provision, "emergency ambulance transport" would be defined as: (a) each ground emergency transport that requires the delivery of life support services, including basic life support or advanced life support, by an emergency medical transponder or emergency medical services practitioner at any practice level; or (b) any other ambulance transport that is designated by the Department to be subject to the assessment.

Private ambulance providers would be required to pay the assessment in a manner determined by the Department, acting in consultation with the Professional Ambulance Association of Wisconsin, or its successor organization, but no more frequently than on a quarterly basis. The Department would be required to allow an ambulance provider to make a delayed payment if the provider is unable to make a payment by the due date established for payments. Private ambulance providers would be prohibited from increasing the rates they charge for services if such an increase is caused by the assessment under this section.

The Department would be required to make reimbursement payments to private ambulance providers and to health maintenance organizations (HMOs), for eligible services delivered through an MA HMO. The supplemental reimbursement would be eligible for federal matching funds, at the

standard federal matching rates, meaning that every $1 of assessment revenue paid back to providers would generate approximately $1.50 in new federal matching funds. Federal regulations place certain limits on the use of provider assessment revenues, including a prohibition against the state distributing the funds in a way that guarantees that the providers are held harmless for the amount of the tax that they pay.

The Department would be required to submit a Medicaid state plan amendment or any other approval that is required to CMS to implement the assessment and supplement provisions, and would be prohibited from levying the assessment until it has obtained federal approval.

The substitute amendment would create a segregated ambulance service provider trust fund to receive assessment revenue and would require DHS to request appropriation authority in the 2023-25 biennial budget to expend money from that fund to make supplemental payments and, at the Department's option, to pay administrative costs of collecting the assessment. The Department would have the authority to begin making supplemental payments beginning in the 2023-25 biennium if appropriation authority is provided in the 2023-25 budget.

The substitute amendment would permit the Department to request funding from an alternative fund source prior to the passage of the 2023-25 budget to pay costs of administering or implementing the assessment. This request would be submitted to the Joint Committee on Finance.

The MA program currently uses provider assessments for hospitals and nursing homes, although the methods of assessment and provisions for making additional reimbursement payments vary.

FISCAL EFFECT

The primary state fiscal effect of the certified public expenditure provision would be to increase FED expenditures by the amount of the matching funds received for CPE claims. It is not possible to develop a reliable estimate of the amount of federal matching funds that would be claimed by local governments because public ambulance providers do not currently report their costs and revenues. In addition, it is uncertain how many providers would choose to submit CPE claims.

In addition to this direct fiscal effect, the state could incur costs associated with implementing and administering the program. DHS would need to prepare and submit to CMS a state plan amendment, a process which typically requires months to a year. Once approved, DHS staff or contracted agencies would need to collect, validate, and submit to CMS data on each participating local government's expenditures, and determine the appropriate claim amount. DHS estimates that contracting for these administrative functions would cost $163,200 all funds ($81,600 GPR and $81,600 FED) per year. The substitute amendment would not provide funding for DHS to administer the CPE program, so any such costs would have to be absorbed by the Department using existing sources of administrative funding.

The Department also estimates that, to secure federal approval for both the CPE program and the supplement for private providers, they will need to contract to collect data on payments made by

insurers and other private payers to calculate the average commercial rate (ACR) and demonstrate that supplemental payments are below this threshold each year. They estimate annual costs of $129,600 all funds ($64,800 GPR and $64,800 FED) to determine the ACR.

The provisions of the substitute amendment creating the assessment and supplement for private ambulance providers would have the direct fiscal effect of creating SEG revenue in the new trust fund for ambulance service providers. If the 2023-25 biennial budget or another appropriations bill grants DHS the authority to expend the assessment revenue as supplemental MA payments, this would increase FED and SEG expenditures. It is difficult to estimate the scale of these effects as well, as ambulance providers do not currently report their net patient revenues publically. As a point of comparison, a similar provision recently enacted in Massachusetts is expected to generate assessment revenue of approximately $27 million annually. However, that state's population and its market for ambulance services is likely sufficiently different from Wisconsin's that this estimate should only be used to get a general sense of the magnitude of the fiscal effect of the proposal.

As in the case of the CPE, it is likely that the state would incur further costs to implement the assessment and supplement, including to obtain federal approval and make changes to provider payment systems. The Department estimates these one-time costs at $800,000 all funds ($200,000 GPR and $600,000 FED). Unless the Department requests and receives an appropriation supplement as described in the substitute amendment, these costs would need to be absorbed within existing administrative appropriations for the current biennium.

It is also likely that DHS would need to contract for the ongoing administration of the assessment. The Department estimates that they would need to establish an administrative contract including the collection of information on provider revenues necessary to determine each providers' liability under the assessment, at an annual cost of $500,000 all funds ($250,000 GPR and $250,000 FED). Until it was repealed in 2017, the Department of Revenue administered a similar assessment levied on ambulatory surgical centers, and retained five percent of revenues for administrative costs. Likewise, DHS currently collects annual assessments on hospitals' gross patient revenues, the administration of which is funded with a portion of revenues collected from the assessments. Funding for these costs would need to be included in the department's 2023-25 biennial budget request.

Prepared by: Carl Plant