

NOTICES

DEPARTMENT OF HUMAN SERVICES

Nursing Facility Assessment Program for Fiscal Year 2023-2024

**[54 Pa.B. 485]
[Saturday, January 27, 2024]**

The Department of Human Services (Department) is providing final notice of the assessment amount, the assessment methodology and the estimated aggregate impact on nursing facilities that will be subject to the assessment under the Nursing Facility Assessment Program (Assessment Program) for Fiscal Year (FY) 2023-2024.

Background

Article VIII-A of the Human Services Code (code) (62 P.S. §§ 801-A—815-A) authorizes the Department to impose an annual monetary assessment on nonpublic and county nursing facilities in this Commonwealth. See 62 P.S. §§ 803-A and 815-A.¹

Under Article VIII-A of the code, the Department may impose the assessment only to the extent that the assessment revenues qualify as the State share of Medical Assistance (MA) Program expenditures eligible for Federal financial participation (FFP). To ensure receipt of FFP, Article VIII-A of the code requires the Department to seek a waiver from the Centers for Medicare & Medicaid Services (CMS), if necessary, to implement the Assessment Program. See 62 P.S. § 812-A. CMS approved the Department's waiver request on January 17, 2024.

For each fiscal year that the Assessment Program is implemented, the Secretary of the Department (Secretary) determines the aggregate amount of the assessment and the annual assessment rates in consultation with the Secretary of the Budget. See 62 P.S. § 804-A. The annual assessment rates must be sufficient to generate at least \$50 million in additional revenue, but not more than the maximum aggregate assessment amount that qualifies for FFP. See 62 P.S. § 804-A.

Before imposing an annual assessment for a fiscal year, the Secretary must publish a notice in the *Pennsylvania Bulletin*. The notice must specify the amount of the assessment being proposed, explain the proposed assessment methodology, identify the estimated assessment amount and aggregate impact on nursing facilities subject to the assessment and provide interested persons a 30-day period to comment. See 62 P.S. § 805-A.

After consideration of any comments received during the 30-day comment period, the Secretary must publish a second notice announcing the rate of assessment for the fiscal year. See 62 P.S. § 805-A. The annual aggregate assessment amount and assessment rate for the fiscal year must be approved by the Governor. See 62 P.S. § 804-A.

The Secretary published a notice at 53 Pa.B. 3384 (June 24, 2023) announcing the proposed assessment rates, the aggregate amount and the impact for FY 2023-2024. No comments were received by the Department in response to the proposed rates notice.

Assessment Methodology and Rates

The following nursing facilities will continue to be exempt from the Assessment Program in FY 2023-2024:

- (1) State-owned and operated nursing facilities.
- (2) Veterans Administration nursing facilities.
- (3) Nursing facilities that provide nursing facility services free of charge to all residents.

(4) Nursing facilities that have not been licensed and operated by either the current or a previous owner for the full calendar quarter prior to the calendar quarter for which an assessment is collected.

For FY 2023-2024, the Department will continue to assess nonexempt nursing facilities at two rates. An assessment rate of \$9.32 will continue to apply to the following five categories of nursing facilities:

- County nursing facilities.
- Nursing facilities that have 44 or fewer licensed beds.
- Certain continuing care retirement community (CCRC) nursing facilities (see 40 Pa.B. 7297 (December 18, 2010)).
- Nursing facilities with an MA occupancy rate of at least 94% based on Calendar Year (CY) 2021 resident days as of July 19, 2022. For the purpose of qualifying for the lower assessment rate, a nursing facility's MA occupancy rate will be calculated as follows: $MA \text{ Occupancy Rate} = \frac{\text{Sum of Total PA MA Days from the CY 2021 resident days data}}{\text{of Total Resident Days from the CY 2021 resident days data}}$, rounded to two decimals (nearest whole percent).
- Nursing facilities with at least 80,000 MA days based on the CY 2021 resident days as of July 19, 2022.

For all other nonexempt facilities, including nursing facilities that began participation in a CCRC on or after July 1, 2010, an assessment rate of \$33.41 will continue to apply.

Aggregate Assessment Amounts and Fiscal Impact

The Department estimates that the annual aggregate assessment fees for nonexempt nursing facilities will total \$458.294 million. The Department will use the State revenue derived from the assessment fees and any associated FFP to support payments to qualified MA nursing facility providers in accordance with applicable laws and regulations.

VALERIE A. ARKOOSH,
Secretary

Fiscal Note: 14-NOT-1606. Under section 612 of The Administrative Code of 1929 (71 P.S. § 232), (1) General Fund; (2) Implementing Year 2023-24 is -\$458,294,000; (3) 1st Succeeding Year 2024-25 through 5th Succeeding Year 2028-29 are \$0; (4) 2022-23 Program—\$4,460,046,000; 2021-22 Program—\$4,057,184,000; 2020-21 Program—\$3,165,550,000; (7) Community HealthChoices; (8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 24-117. Filed for public inspection January 26, 2024, 9:00 a.m.]

¹ Act 54 of 2022, § 16 amended the Commonwealth's Fiscal Code to reauthorize the assessment under Article VIII-A through June 30, 2026. See 72 P.S. § 1606-T.

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