

NOTICES

DEPARTMENT OF HUMAN SERVICES

Nursing Facility Assessment Program for Fiscal Year 2022-2023

[53 Pa.B. 678]

[Saturday, January 28, 2023]

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) 2022-2023.

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.

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 December 7, 2022.

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 52 Pa.B. 6120 (September 24, 2022) announcing the proposed assessment rates, the aggregate amount and the impact for FY 2022-2023. 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 2022-2023:

- (1) State-owned and operated nursing facilities.
- (2) Veteran's 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 2022-2023, the Department will continue to assess nonexempt nursing facilities at two rates. An assessment rate of \$9.32, which represents an increase of \$3.76 from last year's rate, will 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: $\text{MA Occupancy Rate} = \frac{\text{Sum of Total PA MA Days from the CY 2021 resident days data}}{\text{Sum of Total Resident Days from the CY 2021 resident days data}}$, rounded to two decimals (nearest whole percent).
- Nursing facilities with at least 90,000 MA days and with an overall occupancy rate of 77% or higher based on the CY 2021 resident days as of July 19, 2022. For the purpose of qualifying for the lower assessment rate, a nursing facility's overall occupancy rate will be calculated as follows: $\text{Overall Occupancy Rate} = \frac{\text{Sum of Total Resident Days from CY 2021 resident days as of July 19, 2022}}{(\text{number of licensed beds as of February 10, 2022} \times \text{number of days in the fiscal year})}$, rounded to two decimals (nearest whole percent). The overall occupancy rate calculation will use 365 days in a fiscal year unless the state fiscal year includes an additional day due to leap year in which case the number of days in the fiscal year will be 366.

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, which represents an increase of \$3.76 from last year's rate, will apply.

Aggregate Assessment Amounts and Fiscal Impact

The Department estimates that the annual aggregate assessment fees for nonexempt nursing facilities will total \$446.312 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.

MEG SNEAD,
Acting Secretary

Fiscal Note: 14-NOT-1561. (1) General Fund; (2) Implementing Year 2022-2023 is -\$446,312,000; (3) 1st Succeeding Year 2023-24 through 5th Succeeding Year 2027-28 are \$0; (4)

2021-22 Program—\$4,252,000,000; 2020-21 Program—\$3,166,000,000; 2019-20 Program—\$2,329,000,000; (7) Community HealthChoices; (8) recommends adoption. Funds have been accounted for in the budget.

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[Top](#)

[Bottom](#)