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NOTICES

DEPARTMENT OF HUMAN SERVICES

Revised Nursing Facility Assessment Program for Fiscal Year 2020-2021

[51 Pa.B. 1755]
[Saturday, March 27, 2021]

The Department of Human Services (Department) announces updated proposed assessment rates and updated estimated aggregate impact on nursing facilities subject to the assessment under the assessment methodology for Fiscal Year (FY) 2020-2021.

Background

The Secretary of the Department (Secretary) published a notice at 50 Pa.B. 3178 (June 27, 2020) that announced the proposed assessment rates, the aggregate amount and the impact under the methodology for FY 2020-2021. No comments were received by the Department in response to the proposed notice.

As explained in the prior notice, 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 through FY 2021-2022. 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). See 62 P.S. § 803-A. 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 if necessary, to implement the Assessment Program. See 62 P.S. § 812-A.

For each fiscal year that the Assessment Program is implemented, the code authorizes the Secretary to determine the aggregate amount of the assessment and the annual assessment rate in consultation with the Secretary of the Budget. See 62 P.S. § 804-A. The code specifies that 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 may be assessed under 42 CFR 433.68(f)(3)(i) (relating to permissible health care-related taxes) or any other maximum established under Federal law. See 62 P.S. § 804-A.

The Secretary must publish a notice in the *Pennsylvania Bulletin* before imposing an annual assessment for a fiscal year. 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.

In determining the proposed rates under the methodology for FY 2020-2021 that were initially published in the notice at 50 Pa.B. 3178, the Department examined projected nursing facility revenues for purposes of assuring the overall assessment amount would comply with Federal rules relating to maximum permissible levels for health care-related assessments. The Department did not have estimates of the impact of the novel coronavirus (COVID-19) pandemic on net patient revenues of nursing facilities at the time it published the June 2020 notice. The Department has since evaluated nursing facility financial reporting required by the act of May 29, 2020 (P.L. 186, No. 24) and determined it is necessary to issue new annual aggregate assessment amounts and assessment rates for FY 2020-21 in this updated proposed notice to comply with State and Federal statute. See 62 P.S. §§ 803-A—804-A and 42 CFR 433.68(f)(3)(i).

Updated Proposed Assessment Methodology and Rates for FY 2020-2021

The following nursing facilities will continue to be exempt from the Assessment Program under the methodology for FY 2020-2021:

- (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) Newly licensed nursing facilities that have not been licensed and operated by the current or previous owner will be exempt until the nursing facility's days are included in the data used as the basis of the assessment. A nursing facility that changes ownership is not considered a newly licensed nursing facility for assessment purposes.

The Department will continue to assess nonexempt nursing facilities at two rates. Under the methodology for FY 2020-2021, an assessment rate of \$4.61 which represents a decrease of \$2.69 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) 2018 resident days as of November 19, 2019. For the purpose of qualifying for the lower assessment rate, a nursing facility's MA occupancy rate will be calculated as follows: $MA\text{ Occupancy Rate} = \frac{\text{Sum of Total PA MA Days from the CY 2018 resident days data}}{\text{Sum of Total Resident Days from the CY 2018 resident days data}}$, rounded to two decimals.
 - Nursing facilities with at least 125,000 MA days and with an overall occupancy rate of 90% or higher based on the CY 2018 resident days as of November 19, 2019. For the purpose of qualifying for the lower assessment rate, a nursing facility's overall occupancy rate will be calculated as follows: $Overall\text{ Occupancy Rate} = \frac{\text{Sum of Total Resident Days from CY 2018 resident days as of November 19, 2019}}{\text{(number of licensed beds as of November 18, 2019} \times 365)}$, rounded to two decimals.

For all other nonexempt facilities, including nursing facilities that began participation in a CCRC on or after July 1, 2010 an assessment rate of \$28.70 will apply which is a decrease of \$2.69 from last year's rate.

Aggregate Assessment Amounts and Fiscal Impact

The Department estimates that the annual aggregate assessment fees for nonexempt nursing facilities will total \$425.337 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.

Public Comment

Interested persons are invited to submit written comments regarding the contents of this notice to the Department of Human Services, Office of Long-Term Living, Bureau of Policy Development and Communications Management, Attention: Montrell Fletcher, P.O. Box 8025, Harrisburg, PA 17105-8025, or at RA-PWOLTLNFPUBLICCOM@pa.gov. Comments received within 30 days will be reviewed and considered for any subsequent revision of the notice.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

TERESA D. MILLER,
Secretary

Fiscal Note: 14-NOT-1430. (1) General Fund; (2) Implementing Year 2020-21 is \$425,337,000; (3) 1st Succeeding Year 2021-22 through 5th Succeeding Year 2025-26 are \$0; (4) 2019-20 Program—\$2,328,000,000; 2018-19 Program—\$693,766,000; 2017-18 Program—N/A; (7) Community HealthChoices; (8) recommends adoption. Funds have been included in the budget to cover this increase.

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