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NOTICES

DEPARTMENT OF HUMAN SERVICES

Nursing Facility Assessment Program for Fiscal Year 2021-2022

[51 Pa.B. 3927]
[Saturday, July 17, 2021]

This notice announces the proposed assessment amount, the proposed 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) beginning in Fiscal Year (FY) 2021-2022.

Background

Article VIII-A of the Human Services Code (code) (62 P.S. §§ 801-A—815-A) authorizes the Department of Human Services (Department) to impose an annual monetary assessment on nonpublic and county nursing facilities in this Commonwealth each fiscal year until June 30, 2022. 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. For FY 2021-2022, the Department will submit a waiver request to CMS to implement changes to the Assessment Program as described in this notice. The implementation of these changes is contingent on CMS's approval of the waiver request.

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.

This notice announces the assessment amounts, rates and methodology that the Department is proposing to implement in FY 2021-2022 and the estimated aggregate impact on nursing facilities that will be subject to the assessment in FY 2021-2022.

Proposed Assessment Methodology and Rates

During FY 2021-2022, the Department is proposing to modify the assessment methodology by now including in the lower rate tier nursing facilities with at least 115,000 MA days and with an overall occupancy rate of 90% or higher based on FY 2019-2020 resident days data. No other changes to the current assessment methodology have been made. For FY 2021-2022 the Department is also proposing a uniform \$0.95 increase to the FY 2020-2021 assessment rates for both tiers. The Department is proposing to calculate the annual assessment amount for each nonexempt nursing facility by multiplying its assessment rate by the facility's historical non-Medicare resident days for FY 2019-2020. The Department intends to continue its policy of annually updating the basis of the assessment to the most current year for which complete data is available. The Department will continue to collect the annual assessment amount in four equal quarterly installments. With these modifications, the Assessment Program will be implemented as follows:

For FY 2021-2022, the assessment will be imposed on all licensed nursing facilities in this Commonwealth except the following nursing facilities, which will be exempt from the Assessment Program:

- (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 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.

For FY 2021-2022, the Department is proposing to continue to assess nonexempt nursing facilities at two rates. The Department is proposing to assess a rate of \$5.56 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 FY 2019-2020 resident days as of March 17, 2021. For the purpose of qualifying for the lower assessment rate, a nursing facility's MA occupancy rate will be calculated as follows: $\text{MA Occupancy Rate} = \frac{\text{Sum of Total PA MA Days from the FY 2019-2020 resident days data}}{\text{Sum of Total Resident Days from the FY 2019-2020 resident days data}}$, rounded to two decimals.
- Nursing facilities with at least 115,000 MA days and with an overall occupancy rate of 90% or higher based on the FY 2019-2020 resident days as of March 17, 2021. For the purpose of qualifying for the lower assessment rate, a nursing facility's overall occupancy rate will be calculated as follows: $\text{Overall Occupancy Rate} = \frac{\text{Sum of Total Resident Days from FY 2019-2020 resident days as of March 17, 2021}}{\text{(number of licensed beds as of March 23, 2021} \times 365)}$, rounded to two decimals.

For all other nonexempt facilities, including nursing facilities that began participation in a CCRC on or after July 1, 2010, the Department is proposing to assess these facilities at a rate of \$29.65.

Aggregate Assessment Amounts and Fiscal Impact

The Department estimates that if the proposed assessment rates are implemented the annual aggregate assessment fees for nonexempt nursing facilities will total \$436.313 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 this proposed assessment to the Department of Human Services, Office of Long-Term Living, Bureau of Policy and Regulatory Management, Attention: Montrell Fletcher, P.O. Box 8025, Harrisburg, PA 17105-8025 or at RA-PWOLTLNFPUBLICCOM@pa.gov. Comments must be submitted within 30 days of publication of this notice. See 62 P.S. § 805-A. After considering the comments, the Secretary will publish a second notice announcing the final assessment rates for FY 2021-2022. The Department will not begin collecting assessment fees until after the publication of the final assessment rate 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).

MEG SNEAD,
Acting Secretary

Fiscal Note: 14-NOT-1454. (1) General Fund; (2) Implementing Year 2021-2022 is \$436,313,000; (3) 1st Succeeding Year 2022-23 through 5th Succeeding Year 2026-27 are \$0; (4) 2020-21 Program—\$2,328,000,000; 2019-20 Program—\$662,269,000,000; 2018-19 Program—\$0; (7) Community HealthChoices; (8) recommends adoption. Funds have been included in the budget to cover this increase.

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