

# NOTICES

## DEPARTMENT OF HUMAN SERVICES

### Nursing Facility Assessment Program for Fiscal Year 2017-2018

[47 Pa.B. 7650]

[Saturday, December 16, 2017]

This notice announces the amount of the assessment that the Department of Human Services (Department) is implementing for Fiscal Year (FY) 2017-2018, provides an explanation of the assessment methodology that the Department is using in FY 2017-2018 and identifies the estimated aggregate impact on nursing facilities which will be subject to the assessment.

#### *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 nursing facilities and county nursing facilities in this Commonwealth each fiscal year through FY 2018-2019. 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 of the Department (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 qualifies for Federal matching funds. 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.

The Secretary published a notice at 47 Pa.B. 3461 (June 17, 2017) announcing the proposed assessment rates, the aggregate amount and the impact for FY 2017-2018. One commentator, a nonpublic nursing facility provider, submitted comments related to supplemental payments, specifically reimbursement of the MA allowable assessment cost and quarterly supplemental payments for nonpublic nursing facilities which are funded by a portion of assessment revenues. Since this notice is related to revenue and not supplemental payments, the comments are outside the scope of the notice.

#### *Assessment Methodology and Rates for FY 2017-2018*

The following nursing facilities will continue to be exempt from the Assessment Program in FY 2017-2018:

(1) State owned and operated nursing facilities.

(2) Veteran's Administration nursing facilities.

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

(4) Nursing facilities that provide nursing facility services free of charge to all residents.

The Department will continue to assess nonexempt nursing facilities at two rates. One rate will apply to four categories of nursing facilities: county nursing facilities; nursing facilities that have 44 or fewer licensed beds; qualified nursing facilities affiliated with Continuing Care Retirement Communities (CCRC) (see 40 Pa.B. 7297 (December 18, 2010)); and nursing facilities with an MA occupancy rate of at least 94% based on the 4 consecutive assessment quarters beginning April 1, 2015, and ending March 31, 2016, for each nursing facility as of April 22, 2016. The other rate will apply to all other nonexempt facilities, including nursing facilities that began participation in a CCRC on or after July 1, 2010. Using the applicable rate, the Department will calculate an annual assessment amount for each nonexempt facility by multiplying its assessment rate by the facility's historical non-Medicare resident day for the four consecutive assessment quarters beginning April 1, 2015, and ending March 31, 2016, and collect the annual assessment amount in four equal quarterly installments.

The Department will maintain the same rate structure for FY 2017-2018 as in FY 2016-2017. For FY 2017-2018, the assessment rates for nonexempt nursing facilities will be as follows:

(1) For county nursing facilities, for nursing facilities that have 44 or fewer licensed beds, for qualified CCRC nursing facilities, and nursing facilities with an MA occupancy rate of at least 94% based on the 4 consecutive assessment quarters beginning April 1, 2015, and ending March 31, 2016, for each nursing facility as of April 22, 2016, the assessment rate will be \$8.01 per historical non-Medicare resident day.

(2) For all other nonexempt nursing facilities, the assessment rate will be \$32.10 per historical non-Medicare resident day.

The Assessment Program due dates will be available on the Department's web site at <http://www.dhs.pa.gov/provider/longtermcarecasemixinformation/index.htm>.

#### *Aggregate Assessment Amounts and Fiscal Impact*

The Department estimates that the annual aggregate assessment fees for nonexempt nursing facilities will total \$506.562 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 and Regulatory Management, Attention: Marilyn Yocum, P.O. Box 8025, Harrisburg, PA 17105-8025. 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 AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

TERESA D. MILLER,  
Acting Secretary

**Fiscal Note:** 14-NOT-1193. (1) General Fund; (2) Implementing Year 2017-18 is -\$506,562,000; (3) 1st Succeeding Year 2018-19 through 5th Succeeding Year 2022-23 are \$0; (4) 2016-17 Program—\$1,083,000,000; 2015-16 Program—

\$968,083,000; 2014-15 Program—\$810,545,000; (7) Long-Term Care; (8) recommends adoption. Funds have been included in the budget to cover this increase.

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