

Report of the Special Committee on Nursing Facility Reimbursement Rate Methodology to the 2024 Kansas Legislature

CHAIRPERSON: Representative Les Mason

VICE-CHAIRPERSON: Senator Beverly Gossage

OTHER MEMBERS: Senators Renee Erickson, Michael Fagg, Carolyn McGinn, and Jeff Pittman; and Representatives Ron Bryce, Will Carpenter, John Eplee, Kirk Haskins, and Jarrod Ousley

STUDY TOPIC

The Committee is directed to:

- Review the process for Medicaid reimbursement of nursing facilities and consider alternative methods to calculate reimbursement that support the longevity of Kansas nursing homes.

[*Note:* Provisions in 2023 HB 2184 [Section 35(d)] directed the Legislature to create an interim study committee to “take a holistic view of nursing facility reimbursement rate methodology, including cost center caps and an acuity-based add-on.”]

Special Committee on Nursing Facility Reimbursement Rate Methodology

REPORT

Conclusions and Recommendations

The Special Committee on Nursing Facility Reimbursement Rate Methodology notes reimbursement rates for nursing facilities are not keeping pace with costs and that changes should be made to the methodology currently used to rebase rates. The Committee recognizes the important role played by the Medicaid add-on approved by the 2023 Legislature, incentive programs for nursing facilities, and the facility survey process, and requests further information on these topics.

The Committee submits the following recommendations:

- The Kansas Department for Aging and Disability Services (KDADS) explore and provide a report to the Legislature on the benefits and challenges of shifting the rebase process to include one year of cost reports rather than three years;
- The Legislature extend the Medicaid add-on for nursing facilities based on the number of Medicaid residents served for FY 2025;
- KDADS review the following and provide a report on these topics to the House Committee on Social Services Budget: ownership structures of nursing facilities in Kansas; how many are owned by Kansas individuals and businesses; the use of holding companies; the current cost-reporting process and structure; financial information reviewed when a nursing facility is sold; and the differences between for-profit and nonprofit nursing facilities, including quality of care. Further, the House Committee on Social Services Budget should consider requesting the Legislative Post Audit Committee to approve an audit by the Legislative Division of Post Audit on these topics;
- The Legislature review the facility survey process and compare the process in Kansas with processes in other states, including fine amounts, metrics, surveyor education, and the role the state agency can play in ensuring facilities are aware of and understand federal guidelines and requirements;
- KDADS conduct an internal review of the current incentive program structure for nursing facilities, including how much funding is currently available for incentive programs;
- The Legislature and KDADS explore the use of incentives, including the following: encouraging facilities that focus on behavioral health programs and services, supporting facilities owned by Kansas individuals and businesses, and encouraging energy efficient facilities. In addition, the Legislature should explore adding state funding to enhance the availability of incentives;

- KDADS provide the Legislature with information on options to apply the Critical Access Hospital Model to nursing facilities;
- KDADS provide a report to the Legislature on the nursing facility provider assessment and formula for distributing funds;
- KDADS explore the possibility of raising the personal needs allowance for Medicaid-funded nursing facility residents and report findings back to the Legislature;
- The Legislature explore methods to support nursing facilities in managing the proposed Centers for Medicare and Medicaid Services rule governing staff ratios, including staff incentives, and consider methods to partner with educational institutions to grow the nursing workforce;
- The Legislature review methods to reimburse treatment for dementia care, including adjusting the case mix index or creating an add-on incentive factor. In addition, the Legislature should explore the number of facilities specifically equipped to provide this level of care;
- The Kansas Legislative Research Department (KLRD) explore the licensing requirements for the nursing home administrator position in other states, including practicum requirements, and efforts other states have made to make these positions more accessible. KLRD should review which requirements are federally set and which requirements the State can adjust; and
- The Legislature explore the funding and structure required to extend Targeted Case Management services to additional Home and Community Based Services waivers, including the Frail Elderly, Physical Disability, and Brain Injury waivers.

Proposed Legislation: None.

BACKGROUND

In 2023, enacted HB 2184 Sec. 35(d) created the Special Committee on Nursing Facility Reimbursement Rate Methodology (Committee) to take a holistic view of the nursing facility reimbursement rate methodology, including cost center caps and an acuity-based add on.

The Legislative Coordinating Council authorized two meeting days for the Committee. The Committee met twice during the 2023 Interim, on September 21 and 22. The first meeting day was spent hearing testimony and the second meeting day was largely spent in discussion and creating recommendations.

COMMITTEE ACTIVITIES

The Committee's two meeting days focused on an overview of the reimbursement rate-setting methodology in other states and in Kansas, followed by testimony by stakeholders, including individuals, providers, and organizations.

September 21 Meeting

Information from Other States

At the September 21 meeting, a representative of the National Conference of State Legislatures (NCSL) provided an overview of reimbursement payments to nursing facilities for Medicaid residents and the rate-setting methodologies used by other states. The representative illustrated how, within the Medicaid program, funds flow from the federal level to states, and ultimately to vendors,

providers, and patients. The representative also described that Medicaid nursing facility payments can be state-directed as fee-for-service (FFS) payments, or the State may delegate payments by contracting with private entities through a managed long-term services and supports (MLTSS) model.

It was noted that 22 states rebase FFS costs annually and 12 states rebase FFS costs every 2 to 4 years. Of the states with MLTSS payment models, 14 have established minimum fee schedules for nursing facilities in managed care systems and 6 states require direct payments for nursing facilities.

Information on Kansas

The Director of Nursing Facility and Adult Care Home Programs for the Kansas Department for Aging and Disability Services (KDADS), reviewed the role of KDADS in setting reimbursement rates for long-term-care facilities, which includes establishing the initial rate for new facilities, reviewing, tracking cost report submissions and communicating about them, updating the Medicaid state plan with rates, and applying legislative action, such as the Medicaid add-on approved by the 2023 Legislature.

A Senior Manager from Myers and Stauffer, LC (Manager) outlined the methodology to determine Medicaid reimbursement rates for nursing facilities in Kansas and defined the various terms that are used when establishing rate calculations, such as:

- Case Mix Index (CMI), a numerical value indicating the acuity (level of care needed) of a nursing facility's residents;
- Patient-Driven Payment Model (PDPM), a payment system implemented by the Centers for Medicare and Medicaid Services (CMS) in 2019, to which Kansas will transition in FY 2025; and
- Resource Utilization Group (RUG), the current classification system used by Kansas, which will be replaced by PDPM.

The Manager explained that nursing homes are paid facility-specific per diem rates based on cost-report data submitted by each facility, various per diem add-ons (e.g., real and personal property fee, quality incentive factors, bed tax adjustment, and the legislatively created Medicaid add-on), and other factors. Additional factors impacting a nursing facility's Medicaid rate, such as the operating expenses, indirect health care costs (housekeeping and activities), direct health care costs (nursing and nursing supplies), and the real and personal property fee, were described.

The Manager noted that the FY 2024 average rate is \$276.36, and the Manager described the impact of the Kansas shift from a RUG classification system to PDPM on July 1, 2024. This change is expected to increase CMI values and increase reimbursement rates for facilities.

Presentations on Nursing Facility Reimbursement Rates by Individuals, Providers, and Organizations

The Committee heard presentations from representatives of four nursing facility advocacy groups: Kansas Health Care Association/Kansas Center for Assisted Living, LeadingAge Kansas, Kansas Adult Care Executives, and Kansas Advocates for Better Care.

The advocacy group representatives all stated that the daily Medicaid reimbursement rate does not fully cover the actual expenses associated with patient care, and they recommended altering the rate-setting methodology to use only one year of cost reports rather than three, as is done in the current process. Other recommendations made by advocates included:

- Continuing the Medicaid add-on payment approved by the 2023 Legislature and considering an additional add-on for patients with behavioral health needs and dementia;
- Reevaluating cost center caps to determine expense and revenue amounts for relevance within current operational activities;

- Increasing incentive rates to keep pace with the average reimbursement rate;
- Supporting nursing facilities with a pass-through payment to address staffing shortages and CMS staffing requirements;
- Exploring the use of a model similar to that of the critical access hospitals to support rural nursing facilities;
- Extending Targeted Case Management services to additional Home and Community Based Services (HCBS) waivers, including the Frail Elderly, Physical Disability, and Brain Injury waivers; and
- Increasing the real and personal property fee that is paid in lieu of an allowable cost for ownership mortgage payments.
- KDADS explore and provide a report to the Legislature on the benefits and challenges of shifting the rebase process to include one year of cost reports rather than three;
- The Legislature extend the Medicaid add-on for nursing facilities based on the number of Medicaid residents served for FY 2025;
- KDADS review the following and provide a report to the House Committee on Social Services Budget: ownership structures of nursing facilities in Kansas; how many are owned by Kansas individuals and businesses; the use of holding companies; the current cost-reporting process and structure; financial information reviewed when a nursing facility is sold; and the differences between for-profit and nonprofit nursing facilities, including quality of care. Further, the House Committee on Social Services Budget consider requesting the Legislative Post Audit Committee to approve an audit by the Legislative Division of Post Audit on the topic;
- The Legislature review the facility survey process and compare the process in Kansas with processes in other states, including fine amounts, metrics, surveyor education, and the role the state agency can play in ensuring facilities are aware of and understand federal guidelines and requirements;
- KDADS conduct an internal review of the current incentive program structure for nursing facilities, including how much funding is currently available for incentive programs;
- The Legislature and KDADS explore the use of incentives, including the following: encouraging facilities that focus on behavioral health programs and services, supporting facilities owned by Kansas individuals and businesses, and encouraging energy efficient facilities. In addition, the Legislature explore adding

The Executive Director of the Center for Health Information and Policy presented information that indicated a need for more transparency regarding the financial reporting by for-profit nursing homes, and he reviewed his research that nursing facility cost reporting does not accurately reflect a facility's profit. The representative recommended to the Committee that the audit authority for nursing homes be expanded to more accurately determine facility ownership.

CONCLUSIONS AND RECOMMENDATIONS

The Committee generally agreed that reimbursement rates for nursing facilities are not keeping pace with costs and that changes be made to the methodology currently used to rebase rates. The Committee recognized the important role played by the Medicaid add-on approved by the 2023 Legislature, incentive programs for nursing facilities, and the facility survey process, and it requested further information on these topics.

Following discussion, the Committee submits the following recommendations:

state funding to enhance the availability of incentives;

- KDADS provide the Legislature with information on options to apply the Critical Access Hospital Model to nursing facilities;
- KDADS provide a report to the Legislature on the nursing facility provider assessment and formula for distributing funds;
- KDADS explore the possibility of raising the personal needs allowance for Medicaid-funded nursing facility residents and report findings back to the Legislature;
- The Legislature explore methods to support nursing facilities in managing the proposed CMS rule governing staff ratios, including staff incentives, and consider methods to partner with educational institutions to grow the nursing workforce;
- The Legislature review methods to reimburse treatment for dementia care, including adjusting the CMI or creating an add-on incentive factor. In addition, the Legislature explore the number of facilities specifically equipped to provide this level of care;
- The Kansas Legislative Research Department (KLRD) explore the licensing requirements for the nursing home administrator position in other states, including practicum requirements, and efforts other states have made to make these positions more accessible. KLRD review which requirements are federally set and those that the State can adjust; and
- The Legislature explore the funding and structure required to extend targeted case management services to additional HCBS waivers, including the Frail Elderly, Physical Disability, and Brain Injury waivers.