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4

A Bill

HOUSE BILL 1688

5 By: Representative M. Gray
6

For An Act To Be Entitled

8 AN ACT TO ESTABLISH COST-REPORTING FOR ASSISTED
9 LIVING FACILITIES TO THE DEPARTMENT OF HUMAN SERVICES
10 AS A CONDITION OF PARTICIPATION IN THE ARKANSAS
11 MEDICAID PROGRAM; AND FOR OTHER PURPOSES.
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Subtitle

14 TO ESTABLISH COST-REPORTING FOR ASSISTED
15 LIVING FACILITIES TO THE DEPARTMENT OF
16 HUMAN SERVICES AS A CONDITION OF
17 PARTICIPATION IN THE ARKANSAS MEDICAID
18 PROGRAM.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code Title 20, Chapter 10, is amended to add an
25 additional subchapter to read as follows:

26 Subchapter 24 – Cost-Reporting of Assisted Living Facilities
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28 20-10-2401. Definitions.

29 As used in this section:

30 (1) “Cost report” means all the cost-reporting forms, schedules,
31 filing certifications, compilation reports, attachments, and supplemental
32 information specified by the instructions of the Department of Human
33 Services; and

34 (2) “Room and board” means all property-related costs, including
35 rental or purchase of real estate, construction costs, interest,
36 depreciation, furnishings, equipment, utilities, maintenance of buildings and



1 grounds, maintenance of equipment and furnishings, building and other
2 property insurance, repairs, renovations, improvements, real estate taxes,
3 and related administrative services, and food expenses for three (3) meals a
4 day or other full nutritional regimen.

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6 20-10-2402. Cost reports.

7 (a) An assisted living facility participating in, or seeking to
8 participate in, the Arkansas Medicaid Program, including any Medicaid waiver
9 program under 42 U.S.C. § 1396n(c) or 42 U.S.C. §1315, shall file a cost
10 report with the Department of Human Services:

11 (1) Annually not later than ninety (90) days after the end of
12 the fiscal year of the facility;

13 (2) Within sixty (60) days of any significant change in the
14 facility's ownership, management, or financial status or solvency; and

15 (3) At any time within sixty (60) days of a written request from
16 the department or the Office of Medicaid Inspector General.

17 (b)(1) The department shall post the cost-reporting instructions,
18 forms, and schedules on its website.

19 (2) The department may revise the cost-reporting instructions,
20 forms, and schedules at any time, following consultation with representatives
21 of the assisted living facility industry and sixty (60) days before written
22 notice to each Medicaid-certified Level II licensed assisted living facility.

23 (3) In the cost-reporting instructions, the department may
24 require electronic submission of cost reports and accompanying information.

25 (c) In preparation and filing of cost reports, each assisted living
26 facility shall:

27 (1) Comply with generally accepted accounting principles and
28 cost-reporting instructions of the department;

29 (2) Follow the accrual method of accounting; and

30 (3) Maintain the working trial balance used in completing the
31 cost reports for each reporting period for a minimum of three (3) years.

32 (d) To be considered complete and timely filed, each cost report
33 shall:

34 (1) Include:

35 (A)(i) All information required by the forms, schedules,
36 certifications, and instructions specified by the department and otherwise

1 comply with generally accepted accounting principles and cost-reporting
2 instructions of the department.

3 (ii) Failure of full disclosure as required by
4 generally accepted accounting principles and cost-reporting instructions
5 shall constitute an incomplete and misleading cost report;

6 (B) Identification of individuals and firms responsible
7 for facility management, accounting and financial reporting, cost report
8 preparation, and internal or independent audits;

9 (C) Owner and related party information;

10 (D) Statistical, occupancy, and staffing information;

11 (E) Certification by the authorized facility officer;

12 (F) Compilation report by the preparer of the cost report
13 or any portion thereof;

14 (G) General operating expenses, including housekeeping,
15 laundry, dietary services, food and dietary supplies, maintenance, utilities,
16 software, and computer equipment;

17 (H) Direct care expenses for providing medically necessary
18 assistance with Medicaid covered activities of daily living and instrumental
19 activities of daily living;

20 (I) General administrative expenses, including
21 administration, marketing, and property, general liability, and professional
22 liability insurance;

23 (J) Employee benefits and payroll taxes expenses;

24 (K) Ownership costs, property related expenses, and all
25 other room and board expenses;

26 (L) Home office expenses and other shared or allocated
27 expenses within or among organizations, owners or related parties, multiple
28 facilities, or different healthcare-related operations;

29 (M) Legal-related and compliance-related expenses,
30 including attorney fees, payment of court judgments, court costs, civil
31 momentary penalties, other fines or penalties incurred, cost of corrective
32 actions; and other expenses to remedy a deficiency;

33 (N) Copy of any management report, audit report, or
34 written opinion issued by a certified public accountant, accounting or audit
35 firm, or internal auditor or compliance officer concerning the facility's
36 accounting or financial reporting practices, internal auditing practices, or

1 the preparation or contents of the current or any prior cost report;

2 (O) Balance sheet for facility operations and for the
 3 consolidated company;

4 (P) Additional information and attachments as necessary to
 5 explain cost report contents, provide backup documentation, and describe and
 6 justify any variations from the department forms, schedules, or instructions;
 7 and

8 (Q) Any other information that the department deems
 9 necessary to:

10 (i) Support state or facility compliance with
 11 federal requirements, including Medicaid waiver terms and conditions;

12 (ii) Meet generally accepted accounting principles;

13 (iii) Facilitate the performance of independent
 14 audits consistent with generally accepted auditing standards and federal and
 15 state cost finding standards;

16 (iv) Apply federal and state cost finding standards;

17 or

18 (v) Assess the reasonableness, efficiency, and
 19 adequacy of Medicaid payments; and

20 (2) Provide complete, correct, and timely information that the
 21 department determines reasonably necessary to:

22 (A) Identify, document, verify, analyze, and audit all
 23 facility costs, expenses by type, cost-finding and allocation methods, and
 24 cost-related statistics;

25 (B) Identify, document, verify, analyze, and isolate:

26 (i) Reasonable and necessary allowable costs of
 27 Medicaid covered direct care services and other reasonable and necessary
 28 federally allowable costs; and

29 (ii) Unallowed costs, including all room and board
 30 expenses, costs attributable to non-Medicaid residents or non-covered
 31 services, and costs that would otherwise be disallowed or considered
 32 unreasonable under Medicaid nursing facility cost finding principles;

33 (C) Assist the department in ascertaining and monitoring
 34 the financial stability and solvency of assisted living facilities;

35 (D) Verify facility compliance with generally accepted
 36 accounting principles and cost-reporting instructions of the department; and

1 (E) Facilitate independent audits consistent with
2 generally accepted auditing standards and federal and state cost finding
3 standards.

4 (e)(1) The department and a designated contractor of the department
5 may request corrections or additional information, including supporting
6 documentation.

7 (2) Facility responses shall be complete, correct, filed timely,
8 certified as true by the facility's authorized executive, and include a
9 preparer's statement if the information was prepared or reviewed by an
10 accountant or auditor.

11 (3) Responses to the department are due within ten (10) days of
12 the request, unless the department authorizes additional time in writing.

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14 20-10-2403. Extensions.

15 (a) If an assisted living facility experiences difficulty in
16 completing their cost report by the due date, the assisted living facility
17 may request an extension from the Department of Human Services.

18 (b) An extension request shall be filed in writing with the department
19 before the due date and describe the difficulties affecting timely
20 completion.

21 (c) Extensions are at the discretion of the department and shall not
22 exceed sixty (60) days per facility per year.

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24 20-10-2404. Review and auditing.

25 (a)(1) The Department of Human Services shall, directly or through a
26 qualified contractor, review or audit each cost report.

27 (2) This review or audit of each cost report may include desk
28 reviews, desk audits, and onsite financial audits of any assisted living
29 facility and the home office of any assisted living facility.

30 (b) An assisted living facility shall provide the following
31 organizations with full and complete access to inspect and copy all records
32 and data pertaining to the operations and finances of the facility, the
33 facility's home office, or multi-facility operation, including cost reports,
34 budgets, expenses, revenues, accounting and financial management practices,
35 audits, staffing, and contracted services:

36 (1) The department and designated contractors of the department;

- 1 (2) Any independent auditor designated by the department;
2 (3) The Office of Medicaid Inspector General;
3 (4) The office of the Attorney General;
4 (5) The United States Office of Inspector General;
5 (6) The United States Government Accountability Office; and
6 (7) The Centers for Medicare and Medicaid Services.

7 (c)(1) At any time, the department may order and enforce the
8 performance of a comprehensive independent financial audit of any assisted
9 living facility participating in Medicaid.

10 (2) Once ordered in writing by the department, the independent
11 audit shall be initiated within twenty (20) days of the order of the
12 department unless the department authorizes additional time in writing.

13 (3) The independent audit shall be:

14 (A)(i) Performed at the expense of the facility being
15 audited or by the facility's parent company.

16 (ii) If the assisted living facility fails to pay
17 the cost of the audit services, the department shall withhold Medicaid
18 payments to the facility until the audit firm is paid or deduct the cost from
19 Medicaid payments otherwise owed to the facility or other facilities under
20 the same ownership;

21 (B) Conducted by a qualified audit firm that is approved
22 in advance by the department, with the audit team led by a certified public
23 accountant and including other qualified professional staff as necessary;

24 (C) Completed consistent with a schedule provided by the
25 independent audit firm and approved by the department, with consultation with
26 the facility, and weekly written status reports to the department; and

27 (D)(i) Performed consistent with generally accepted
28 auditing standards and applicable federal and state cost-finding standards
29 identified by the department and include an audit of the accuracy and
30 completeness of the facility's cost reports.

31 (ii) If directed by the department, the scope of the
32 audit may include a forensic accounting examination.

33 (4) The audit firm and members of the audit team shall have no
34 conflicts of interest with the facility, the facility owners, facility
35 management or finance staff, or related parties.

36 (d)(1) The department shall have complete access to all work papers

1 and findings of the independent auditor.

2 (2) All work papers, reports, and findings shall be submitted to
3 the department no later than they are received by the facility.

4 (3) The independent auditor may provide a separate, confidential
5 report to the department, with a copy to the Office of Medicaid Inspector
6 General.

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8 20-10-2405. Penalties and sanctions.

9 (a) The Department of Human Services shall immediately withhold all
10 Medicaid payments to an assisted living facility and may suspend or limit new
11 admissions of Medicaid beneficiaries to the facility in the event of any of
12 the following and continued until the facility demonstrates full compliance
13 to the satisfaction of the department:

14 (1) The facility fails to file a complete and timely cost report
15 or fails to provide a complete and timely response to a request by the
16 department or the designated contractor of the department for corrections,
17 additional information, or supporting documentation;

18 (2) The facility obstructs or otherwise fails to fully cooperate
19 with any state or federal inspection and copying of facility records or data;

20 (3) The facility obstructs or otherwise fails to fully cooperate
21 with an independent audit ordered by the department or fails to pay for the
22 cost of such independent audit; or

23 (4) The department determines, directly or based on findings of
24 a designated contractor of the department, an independent auditor, or the
25 Office of Medicaid Inspector General that:

26 (A) A reasonable cause to believe that the facility's cost
27 report or responses, or any records supporting the facility's cost report or
28 responses, are false, misleading, or otherwise erroneous exists;

29 (B) The facility lacks the necessary financial records and
30 other documentation to provide a complete and accurate cost report, verify
31 the correctness of information contained in the cost report, or support an
32 independent audit of the cost report and the facility's finances; or

33 (C) The facility lacks the necessary accounting, financial
34 management, recordkeeping, and reporting capabilities and practices to comply
35 with generally accepted accounting principles and the cost-reporting
36 instructions of the department.

1 (b) The department shall impose and collect a monetary penalty of five
2 thousand dollars (\$5,000) plus five hundred dollars (\$500) per day for each
3 day of subsequent noncompliance, on an assisted living facility in the event
4 of the following:

5 (1) The facility is sixty (60) or more days overdue in filing a
6 complete cost report or a complete response to a request by the department or
7 the designated contractor of the department for corrections, additional
8 information, or supporting documentation;

9 (2) The facility obstructs or otherwise fails to fully cooperate
10 with any state or federal inspection and copying of facility records or data;
11 or

12 (3) The facility obstructs or otherwise fails to cooperate with
13 an independent audit ordered by the department fully or is sixty (60) or more
14 days overdue in paying for the cost of such independent audit.

15 (c)(1) Compliance with the cost-reporting, auditing, and record
16 inspection requirements is a condition of Medicaid certification and Medicaid
17 payment for assisted living facilities.

18 (2) The department shall enforce assisted living facility
19 compliance with the requirements of this subchapter through Medicaid provider
20 decertification and exclusion from participation in the Arkansas Medicaid
21 Program.

22 (d)(1) For material, substantial, or repeated noncompliance with cost-
23 reporting, auditing, and record inspection requirements, the department may:

24 (A) Terminate the facility's Medicaid certification;

25 (B) Limit the number of Medicaid residents in the
26 facility; and

27 (C) Exclude the facility from Medicaid participation for
28 five (5) years.

29 (2) The department shall promptly terminate the facility's
30 Medicaid certification and exclude the facility and the facility's certifying
31 officer and responsible financial officers from participating in Medicaid for
32 a minimum period of five (5) years for:

33 (A) Filing of a false or misleading cost report or
34 response;

35 (B) Providing false or misleading records or other
36 documentation to support a cost report or response; or

1 (C) Providing false or misleading information to an
2 independent auditor or federal or state agency inspecting facility records.

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