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2 92nd General Assembly
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4

As Engrossed: H4/3/19

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
27

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 authorized additional time in writing.

13 (f)(1) Neither this subchapter nor the content of the cost reports,
14 individually or collectively, requires or implies that the Arkansas Medicaid
15 Program to reimburse for expenses or of cost-based or other payment
16 methodology.

17 (2) This subchapter does not limit the authority of the
18 department regarding assisted living facility licensing or Medicaid provider
19 certification, reimbursement, program integrity, or waiver program policy and
20 operations.

21 20-10-2403. Extensions.

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

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

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

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31 20-10-2404. Review and auditing.

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

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

1 (3) In addition to independent audits conducted under subsection
2 (c) of this section, the department shall audit comprehensively and timely
3 the cost reports and financial reports and records of all assisted living
4 facilities, consistent with generally accepted auditing standards, according
5 to the following standards:

6 (A) At least fifty percent (50%) of all assisted living
7 facilities or assisted living facility owners filing a cost report for the
8 first time; and

9 (B) At least twenty-five percent (25%) of all assisted
10 living facilities with each facility receiving a comprehensive field audit at
11 least every four (4) years.

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

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

19 (2) Any independent auditor designated by the department;

20 (3) The Office of Medicaid Inspector General;

21 (4) The office of the Attorney General;

22 (5) The United States Office of Inspector General;

23 (6) The United States Government Accountability Office; and

24 (7) The Centers for Medicare and Medicaid Services.

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

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

31 (3) The independent audit shall be:

32 A) Performed at the expense of the department;

33 (B) Conducted by a qualified audit firm that is procured by the
34 department, with the audit team led by a certified public accountant and
35 including other qualified professional staff as necessary;

36 (C) Completed consistent with a schedule provided by the

1 independent audit firm and procured by the department, with consultation with
2 the facility, and weekly written status reports to the department; and

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

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

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

12 (d)(1) The department shall have complete access to all work papers
13 and findings of the independent auditor.

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

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

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20 20-10-2405. Penalties and sanctions.

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

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

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

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

35 (4) The department determines, directly or based on findings of
36 a designated contractor of the department, an independent auditor, or the

1 Office of Medicaid Inspector General that:

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

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

9 (C) The facility lacks the necessary accounting, financial
10 management, recordkeeping, and reporting capabilities and practices to comply
11 with generally accepted accounting principles and the cost-reporting
12 instructions of the department.

13 (b) The department shall impose and collect a monetary penalty of five
14 hundred dollars (\$500) per single violation on an assisted living facility in
15 the event of the following:

16 (1) The facility is thirty (30) or more days overdue in filing a
17 complete cost report or a complete response to a request by the department or
18 the designated contractor of the department for corrections, additional
19 information, or supporting documentation;

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

23 (3) The facility obstructs or otherwise fails to cooperate with
24 an independent audit ordered by the department fully or is thirty (30) or
25 more days overdue in paying for the cost of such independent audit.

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

29 (2) The department shall enforce assisted living facility
30 compliance with the requirements of this subchapter through Medicaid provider
31 decertification and exclusion from participation in the Arkansas Medicaid
32 Program.

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

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

36 (B) Limit the number of Medicaid residents in the

1 facility; and

2 (C) Exclude the facility from Medicaid participation for
3 five (5) years.

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

8 (A) Filing of a false or misleading cost report or
9 response;

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

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

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15 */s/M. Gray*
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