

1 State of Arkansas
2 94th General Assembly
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4

A Bill

HOUSE BILL 1445

5 By: Representative Eubanks
6 By: Senator Irvin
7

For An Act To Be Entitled

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

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

27 Subchapter 24 – Cost-Reporting of Assisted Living Facilities
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29 20-10-2401. Definitions.

30 As used in this section:

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

35 (2) “Room and board” means all property-related costs, including
36 rental or purchase of real estate, construction costs, interest,



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

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7 20-10-2402. Cost reports.

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

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

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

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

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

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

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

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

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

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

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

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

35 (1) Include:

36 (A)(i) All information required by the forms, schedules,

1 certifications, and instructions specified by the department and otherwise
2 comply with generally accepted accounting principles and cost-reporting
3 instructions of the department.

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

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

10 (C) Owner and related party information;

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

12 (E) Certification by the authorized facility officer;

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

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

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

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

24 (J) Employee benefits and payroll taxes expenses;

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

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

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

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

1 accounting or financial reporting practices, internal auditing practices, or
 2 the preparation or contents of the current or any prior cost report;

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

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

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

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

13 (ii) Meet generally accepted accounting principles;

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

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

18 or

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

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

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

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

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

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

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

36 (D) Verify facility compliance with generally accepted

1 accounting principles and cost-reporting instructions of the department; and

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

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

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

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

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

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

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23 20-10-2403. Extensions.

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

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

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

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33 20-10-2404. Review and auditing.

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

36 (2) This review or audit of each cost report may include desk

1 reviews, desk audits, and onsite financial audits of any assisted living
 2 facility and the home office of any assisted living facility.

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

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

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

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

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

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

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

33 (3) The independent audit shall be:

34 A) Performed at the expense of the department;

35 (B) Conducted by a qualified audit firm that is procured by the
 36 department, with the audit team led by a certified public accountant and

1 including other qualified professional staff as necessary;

2 (C) Completed consistent with a schedule provided by the
3 independent audit firm and procured by the department, with consultation with
4 the facility, and weekly written status reports to the department; and

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

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

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

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

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

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

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22 20-10-2405. Penalties and sanctions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (B) Limit the number of Medicaid residents in the
3 facility; and

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

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

10 (A) Filing of a false or misleading cost report or
11 response;

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

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

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