

1 State of Arkansas  
2 94th General Assembly  
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4

As Engrossed: H2/22/23

# 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 may impose any sanction allowed  
24 under this section and may suspend or limit new admissions of Medicaid  
25 beneficiaries to the facility in the event of any of the following and  
26 continued until the facility demonstrates full compliance to the satisfaction  
27 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

36 (4) The department determines, directly or based on findings of

1 a designated contractor of the department, an independent auditor, or the  
2 Office of Medicaid Inspector General that:

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

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

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

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

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

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

24 (3) The facility obstructs or otherwise fails to cooperate with  
25 an independent audit ordered by the department fully.

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/Eubanks*  
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