

MINUTES

2023 SPECIAL COMMITTEE ON NURSING FACILITY REIMBURSEMENT RATE METHODOLOGY

September 21-22, 2023
Room 112-N—Statehouse

Members Present

Representative Les Mason, Chairperson
Senator Beverly Gossage, Vice-Chairperson
Senator Renee Erickson
Senator Michael Fagg
Senator Carolyn McGinn
Senator Cindy Holscher, appointed substitute member to the Committee
Representative Ron Bryce
Representative Will Carpenter
Representative John Eplee
Representative Kirk Haskins
Representative Jarrod Ousley

Members Absent

Senator Jeff Pittman

Staff Present

Megan Leopold, Kansas Legislative Research Department
Leighann Thone, Kansas Legislative Research Department
Dayton LaMunyon, Kansas Legislative Research Department
Scott Abbott, Office of Revisor of Statutes
Jessie Pringle, Office of Revisor of Statutes
Jill Wolters, Office of Revisor of Statutes
Gary Deeter, Committee Assistant

Conferees

Kathryn Costanza, Program Principal, Health, National Conference of State Legislatures
Sheri Jurad, Director of Nursing Facility and Adult Care Home Programs, Kansas
Department for Aging and Disability Services
Dave Halferty, Senior Manager, Myers and Stauffer
Linda MowBray, President/Chief Executive Officer (CEO), Kansas Health Care
Association/Kansas Center for Assisted Living
Rachel Monger, President/CEO, LeadingAge Kansas
Dawn Veh, Board Member, Kansas Adult Care Executives
David Kingsley, Executive Director, Center for Health Information and Policy
Dan Goodman, Executive Director, Kansas Advocates for Better Care

THURSDAY, SEPTEMBER 21 ALL DAY SESSION

Welcome and Introductions

Chairperson Mason called the meeting to order at 9:02 a.m. and welcomed members, staff, conferees, and guests. He reviewed the legislative proviso in HB 2184 Sec. 35(d) that created the Committee with a mandate to take a holistic view of the nursing facility reimbursement rate methodology, including cost center caps and an acuity-based add on.

Overview of Nursing Facility Rate Review in Other States

Via Webex, Kathryn Costanza, Program Principal, Health, National Conference of State Legislatures, provided a high-level overview of how nursing-home reimbursement payments are affected by policies made by the Centers for Medicare and Medicaid Services (CMS) ([Attachment 1](#)). Ms. Costanza illustrated the flow of funds in the Medicaid program from the federal level to states, and ultimately to vendors, providers, and patients. She described states' flexibility in their choice of delivery systems and the payments they make to providers, as long as they meet certain federal guidelines. 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. Ms. Costanza described the payment process for both FFS and MLTSS models and noted that 22 states rebase FFS costs annually and 12 states rebase FFS costs every 2-4 years. Of the states with MLTSS payment models, 14 have established minimum fee schedules for nursing facilities in managed care and 6 states require direct payments for nursing facilities.

Ms. Costanza then commented on the rate structures of six states: Arkansas, Colorado, Iowa, Missouri, Nevada, and New Mexico. She noted variations in rebase policies, legislative structures, and provider services.

Presentation on Nursing Facility Reimbursement Rates

Sheri Jurad, Director of Nursing Facility and Adult Care Home Programs, Kansas Department for Aging and Disability Services (KDADS), reviewed the role of KDADS in setting reimbursement rates for long-term-care facilities and the basic timeline for the rate-setting process. Ms. Jurad's presentation prompted questions about the reimbursement policies and practices in Kansas, which are generally governed by KDADS and the Kansas Department of Health and Environment (KDHE). Responding to questions, Ms. Jurad and Brad Ridley, Commissioner of Financial and Information Services, KDADS, replied:

- The Promoting Excellence through Alternatives in Kansas (PEAK) program is an example of an incentive payment program;
- Kansas has contracted with managed-care organizations (MCOs) to provide health care to citizens. Gainwell Technologies, a contractor hired by KDHE, acts as an intermediary company that monitors and processes Medicaid claims;

- KDADS has 60 surveyor positions for evaluating long-term-care facilities, but presently only 24 positions are filled;
- Fines levied against long-term-care facilities first go to CMS and a portion is then returned to the state;
- In Kansas, more than 300 nursing facilities participate in the Medicaid program and approximately 50 to 75 more that are only Medicare or private pay; and
- Kansas sets a base reimbursement rate for each facility, which differs by facility, but the MCOs could provide a higher rate.

Ms. Jurad then introduced Dave Halferty, Senior Manager, Myers and Stauffer, who outlined the reimbursement methodology rates for nursing facilities ([Attachment 2](#)). He introduced the basic terms used for rate calculations:

- 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 CMS in 2019; and
- Resource Utilization Group (RUG), the current classification system used by Kansas, which is being replaced by PDPM.

He 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, PEAK 2.0, bed tax adjustment, and the legislatively created Medicaid add-on), and other factors. Mr. Halferty responded to members' questions:

- CMS requires each state to have a state plan in order to be reimbursed for services provided to Medicaid beneficiaries;
- In Kansas, approximately 10,000 of the approximately 17,000 long-term-care residents receive Medicaid payments;
- Acuity assessments are conducted every 3 months and rates are adjusted every 6 months, reflecting the previous 2 quarters of acuity assessments;
- MCOs are required to reimburse at a minimum rate set by the state but have the option to reimburse at a higher rate;
- A Medicare patient must reside in a skilled nursing facility for that facility to be reimbursed for services at the Medicare rate, which is typically higher than Medicaid rates;

- The swing-bed program allows a hospital to use existing beds to provide nursing facility services for a set rate, rather than submitting a cost report and receiving a facility-specific rate; and
- The CMI is self-reported by each facility, the CMI scale is set by federal regulations, and the facility's reimbursement rate is adjusted by an inflation factor specific to the nursing facility industry.

Mr. Halferty described some of the 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. He noted that the FY 2024 average rate is \$276.36. He also described the impact from the Kansas shift from a RUG classification system to PDPM on July 1, 2024, which is expected to increase CMI values and increase reimbursement rates.

Mr. Halferty responded to additional questions by describing that the CMI for each nursing facility is available to the public and that KDHE monitors quality of care regulations.

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

Linda MowBray, President/Chief Executive Officer (CEO), Kansas Health Care Association/Kansas Center for Assisted Living (KHCA/KCAL), presented recommendations that would help stabilize senior-care services and enhance quality of care ([Attachment 3](#)). She expressed gratitude for the supplemental funding added by the 2023 Legislature in the form of Medicaid add-on payments, and observed that, even with the supplemental payments, long-term care facilities are not keeping pace with costs. She referenced rate and CMI information from the *Kansas Register* to illustrate the the need for additional funding.

Ms. MowBray made three recommendations for the Committee's consideration:

- Extend the Medicaid supplemental add-on through FY 2027;
- Introduce a provider assessment on MCOs to enhance Long Term Services and Supports funding; and
- Consider a behavioral health add-on payment as an incentive for providers to expand behavioral health services.

Ms. MowBray responded to members' questions:

- Technical assistance programs are available to enhance services such as electronic monitoring, but Ms. MowBray stated telehealth services cannot wholly replace in-person care;
- KHCA/KCAL is affiliated with an organization that will review a facility's energy efficiency, utility contracts, and physical plant;

- In addition to levying fines against facilities for deficiencies, the State could provide resources to assist facilities in preventing and addressing deficiencies.

Rachel Monger, President/CEO, LeadingAge Kansas, also expressed gratitude for the Medicaid add-on for long-term-care facilities in FY 2024 ([Attachment 4](#)). She outlined the following recommendations:

- Address the gap between the present Medicaid reimbursement rate and the average daily cost;
- Include an add-on for behavioral-health residents to help fund the higher costs of care and staff requirements associated with caring for these individuals;
- Create a pass-through payment for long-term-care facilities to meet the proposed CMS change to federal staffing minimums;
- Develop quality incentive payments that will help bridge the gap between available funding and cost of care;
- Increase the Real and Personal Property Fee that is paid in lieu of an allowable cost for ownership mortgage payments;
- Introduce a model similar to the Critical Access Hospital Model for senior care; and
- Rebase rates based on one year of cost reports rather than three years.

Ms. Monger provided the following information in response to Committee member questions:

- The proposed Critical Access Hospital Model for senior care would be focused on supporting rural nursing facilities;
- The personal needs allowance, used for a resident's personal expenses that are not covered by Medicaid, can be increased on a state level;
- In her experience, quality incentives are one of the best ways to improve quality of care;
- A one-year rebase policy will better reflect current costs; and
- There is little difference in facility closure rates between for-profit and not-for-profit facilities.

Dawn Veh, Board Member, Kansas Adult Care Executives, provided six recommendations for the Committee to consider ([Attachment 5](#)):

- Establish full rebase funding. Ms. Veh noted past rebase funding has ranged from 80 percent to 94 percent of costs for services;
- Continue the Medicaid add-on supplemental payment, which has helped to keep nursing homes open during the past year;
- Consider a behavioral health add-on to reflect the additional staff time required to provide care for individuals with behavioral health needs;
- Use only the most recent year's cost reports in the rate rebase process, rather than the previous three years' cost reports;
- Increase incentive values to keep pace with the average reimbursement rate;
- Re-evaluate cost center caps to determine whether the caps reflect current cost structures; and
- Review the current cost report structure to determine expense and revenue accounts for relevance within current operational activities.

Ms. Veh responded to members' concerns by stating there are currently 170 nursing facilities, most of which are skilled nursing facilities.

David Kingsley, Executive Director, Center for Health Information and Policy, presented information indicating a need for more transparency regarding the financial reporting by for-profit nursing homes ([Attachment 6](#)). Mr. Kingsley stated he is not aware of any for-profit nursing homes in Kansas that are owned by Kansas citizens or Kansas corporations. Mr. Kingsley reviewed his research that nursing facility cost reporting does not accurately reflect a facility's profit. He recommended expanding the audit authority for nursing homes to more accurately determine ownership. Mr. Kingsley responded to members' questions:

- Auditors need to review the financial documents of a facility's corporate owner in order to determine actual facility costs and profit; and
- The information he provided does not include information on the quality of care provided by the facilities he described.

Dan Goodman, Executive Director, Kansas Advocates for Better Care, expressed gratitude for the Medicaid add-on that assisted nursing homes for FY 2024 ([Attachment 7](#)). He also stated the following:

- Kansas currently has the fourth highest statewide percentage of long-term care facilities with staffing shortages, suggesting that enhancements addressing sufficient staffing levels are needed;

- Data indicates that many low-care individuals are placed in nursing facilities because no intermediate facilities are available, suggesting the need for alternatives to nursing homes; and
- Restoring case management services to the KanCare Home and Community Based Services Frail Elderly, Physically Disabled, and Brain Injury waivers would reduce the need for institutional care.

Three documents were distributed to assist members in considering recommendations to the Kansas Legislature:

- The Kansas Medical Assistance Report for FY 2023 ([Attachment 8](#));
- A sample rate schedule for the Kansas Medicaid/MediKan Case Mix Schedule ([Attachment 9](#)); and
- KDADS' responses to questions from the Committee ([Attachment 10](#)).

Committee Discussion and Recommendations

The Chairperson deferred further discussion on the presentations until the following day's meeting.

Adjourn

The meeting was adjourned at 4:35 p.m.

FRIDAY, SEPTEMBER 22 ALL DAY SESSION

Welcome and Announcements

Chairperson Mason called the meeting to order at 9:05 a.m., briefly reviewed the previous day's testimony, and invited members to offer recommendations to be submitted to the 2024 Kansas Legislature.

Continued Committee Discussion and Recommendations

Members extensively discussed issues associated with the various topics. Discussion included requesting further information from Brad Ridley, Director of Operations, KDADS, and Scott Brunner, Deputy Secretary of Hospitals and Facilities, KDADS. The following topics/issues were advanced:

- KDADS should 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 should extend the Medicaid add-on for nursing facilities based on the number of Medicaid residents served for FY 2025;
- KDADS should 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 non-profit 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 the topic;
- The Legislature should review the facility survey process and compare the process in Kansas to 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 should 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 should 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 the ability to add state funding to enhance the availability of incentives;
- KDADS should provide the Legislature with information on options to apply the Critical Access Hospital Model to nursing facilities;
- KDADS should provide a report to the Legislature on the nursing facility provider assessment and formula for distributing funds;
- KDADS should explore the possibility of raising the personal needs allowance for nursing facilities and report findings back to the Legislature;
- The Legislature should 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 should review methods to reimburse treatment for dementia care, including adjusting the CMI 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;

- KLRD should 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 those that the State can adjust; and
- The Legislature should explore the funding and structure required to extend Targeted Case Management services to additional waivers, including the Frail Elderly, Physical Disability, and Brain Injury waivers.

A document from KDADS addressing Targeted Case Management was distributed to members ([Attachment 11](#)).

The meeting was adjourned at 11:02 a.m. No further meeting was scheduled.

Adjourn

Prepared by Gary Deeter

Edited by Megan Leopold and Dayton
LaMunyon

Approved by the Committee on:

November 21, 2023

(Date)