

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
94th General Assembly  
Regular Session, 2023

As Engrossed: H2/22/23  
**A Bill**

HOUSE BILL 1445

By: Representative Eubanks  
By: Senator Irvin

### **For An Act To Be Entitled**

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

### **Subtitle**

TO ESTABLISH COST-REPORTING FOR ASSISTED LIVING FACILITIES TO THE DEPARTMENT OF HUMAN SERVICES AS A CONDITION OF PARTICIPATION IN THE ARKANSAS MEDICAID PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 10, is amended to add an additional subchapter to read as follows:

Subchapter 24 – Cost-Reporting of Assisted Living Facilities

20-10-2401. Definitions.

As used in this section:

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

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



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

20-10-2402. Cost reports.

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

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

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

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

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

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

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

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

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

(2) Follow the accrual method of accounting; and

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

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

(1) Include:

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

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

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

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

(C) Owner and related party information;

(D) Statistical, occupancy, and staffing information;

(E) Certification by the authorized facility officer;

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

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

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

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

(J) Employee benefits and payroll taxes expenses;

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

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

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

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

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

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

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

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

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

(ii) Meet generally accepted accounting principles;

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

(iv) Apply federal and state cost finding standards;

or

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

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

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

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

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

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

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

(D) Verify facility compliance with generally accepted

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

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

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

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

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

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

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

20-10-2403. Extensions.

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

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

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

20-10-2404. Review and auditing.

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

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

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

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

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

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

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

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

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

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

(3) The independent audit shall be:

A) Performed at the expense of the department;

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

including other qualified professional staff as necessary;

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

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

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

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

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

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

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

20-10-2405. Penalties and sanctions.

(a) The Department of Human Services may impose any sanction allowed under this section and may suspend or limit new admissions of Medicaid beneficiaries to the facility in the event of any of the following and continued until the facility demonstrates full compliance to the satisfaction of the department:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Terminate the facility's Medicaid certification;

(B) Limit the number of Medicaid residents in the

facility; and

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

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

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

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

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

*/s/Eubanks*