ISSUES BRIEF: Nursing Homes – Financial Responsibility

Issue: The financial responsibility of nursing homes is paramount to honoring the promise of quality care. Nursing homes must utilize a meaningful medical loss ratio (MLR) [% revenue dedicated to resident care]; validate MassHealth rate levels with biennial audits; and be held accountable for problems caused by complex corporate transactions to syphon/conceal profit, or to create self-dealing transactions or related party transactions.

Goal: Financial transparency and a meaningful MLR are both necessary to ensure that essential funds to provide quality care are available.

Problem Statement: To determine responsible MassHealth rates, biennial audits are necessary, since providers claim they are operating at a loss from insufficient MassHealth rates. In addition, the complexity of the industry's financial structures and internal dealings raise concerns of hidden profits.

Background: Nursing homes often report they lose money on MassHealth rates. But ---

- Providers have wide latitude on how they utilize MassHealth and other funds, since there are no limits on self-dealing transactions/contracts and no ceiling on administrative costs.
- The growth of for-profit ownership in nursing homes, including significant investment by private equity firms and real estate investment trusts (REITs), make it clear that nursing homes are profitable businesses.[1]
- A Boston Globe 2014 study of MA nursing home finances found that many nursing homes directed cash to subsidiaries "…paying million-dollar rental fees and helping to pay executives' six-figure salaries…"[2]
- On a national basis, in 2018, the NY Times sounded the alarm: "…nursing homes that outsourced to related parties tended to have fewer nurses & aides per patient, higher rates of patient injuries and unsafe practices…"
- Medicare margins: 2020 16.5%, 20th consecutive year above 10%.
  All payers (includes Medicaid) margins: up from 0.6% in 2019 to 3% in 2020.[3]

Recommendations:

1. **Require comprehensive nursing home audit to determine: MassHealth rate shortfalls and any self-dealing/other transactions detrimental to residents.** Implement rate increases to offset shortfalls, and restructure nursing home finances to benefit residents. Use CHIA (https://www.chiamass.gov/) for audits.
2. **Implement meaningful MLR** (% revenue spent on direct care of residents), Recommend 90% (Oct.'20 NJ standard[4]). As of 10/1/10[5]**,** MA requires 75% of revenue to be spent on direct care costs (75% = average since 2013[6]).
3. **Audit and publicly report use of MA[7], ARPA and other COVID special funding (2020 to current)** to ensure funds are being used as intended and to determine how best to distribute funds for future pandemic/disaster needs.
4. **Determine equitable allocation of MassHealth funds** between those living in facilities and HCBS residents.

For more information, please contact Facilities Workgroup Chair: Arlene Germain, agermain@manhr.org.

Endnotes

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[1] *NURSING HOME MEDICAID FUNDING: SEPARATING FACT FROM FICTION*, Long-Term Care Community Coalition, 1/10/21, page 3, https://nursinghome411.org/wp-content/uploads/2021/01/LTCCC-Policy-Brief-Medicaid-Funding-Facts-vs-Fiction.pdf

[2] Boston Globe, *A pattern of profit and subpar care at Mass. nursing homes*, Kay Lazar, 3/27/16, http://www.bostonglobe.com/metro/2016/03/26/profit-and-care-massachusetts-nursing-homes/JfpOM6rwcFAObDi2JLcAnN/story.htm.

> " In a 2014 study, 44% of MA nursing homes paid rental fees to themselves or a related company (20% paid more than $1M). The review also found that some nursing home owners were paying themselves salaries in excess of $1M…"
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> "…for-profit nursing homes, which constitute 70% of facilities in the state, frequently devote less money to nursing care compared to nonprofit homes, and often have more health and safety violations. The review also found that some nursing home owners were paying themselves salaries in excess of $1 million…"

Also, New York Times, *Care Suffers as More Nursing Homes Feed Money Into Corporate Webs*, Gordon Rau, 1/2/2018, https://www.nytimes.com/2018/01/02/business/nursing-homes-care-corporate.html?_r=0.

Additional quotes from 3/27/16 Boston Globe, footnote 2:

"…For-profit nursing homes were far more likely to pay rental fees to a company they also owned, providing a prime avenue for owners to keep more money.

- Among for-profit nursing homes, 163 paid rental fees to themselves or a related company. Just 11 nonprofit homes reported such payments…" [174 in total, or 44% of all MA nursing homes.]

"… 80 Massachusetts nursing homes [20% of MA nursing homes] each paid more than $1 million in rental fees, with the money often directed to property companies they also own. Among these nursing homes, the health and safety problems found by state inspectors were 42 percent higher than for the facilities that spent less than $1 million. All but one of those that spent more than $1 million in rental fees was for-profit…"

[3] In December 2021, the Medicare Payment Advisory Commission (MedPAC) reported that Medicare margins for skilled nursing facilities in 2020 were 19.2% when Provider Relief Funds were counted (16.5% when Provider Relief Funds were not counted), the 20th consecutive year of Medicare margins above 10%.[4] MedPAC also reported that facilities' total margins (counting all payers, including Medicaid) increased from 0.6% in 2019 to 3% in 2020.

[4] New Jersey: A4482 P.L. 2020, CHAPTER 89, approved September 16, 2020 Assembly, No. 4482 (Second Reprint): "…3.c.2. The direct care ratio shall require 90 percent, or such higher percentage as the commissioner may establish by regulation, of a facility's aggregate revenue in a fiscal year to be expended on the direct care of residents…"

[5] Nursing Facility Accountability and Supports Package 2.0 - September 10,2020, Item 1. on page 2: https://www.mass.gov/doc/covid-19-nursing-facility-accountability-and-supports-package-20/download.

Direct care cost quotient (DCC-Q): As of 10/1/20, nursing homes must have a DCC-Q, per 101 CMR 206.12, of at least 75% during the remainder of FY'21 (10/1/20-6/30/21) and each full FY (July 1 through June 30) thereafter (see Note A). For every 1% below the 75% DCC-Q threshold, a 0.5% downward adjustment is applied to nursing and operating components of the facility's standard payments to a maximum of a 5% reduction.

> Note A: Administrative Bulletin 21-02, 101 CMR 206.00: Standard Payments to Nursing Facilities, effective 2/10/21: Nursing Facility Direct Care Cost Quotient: https://www.mass.gov/doc/administrative-bulletin-21-02-101-cmr-20600-standard-payments-to-nursing-facilities-nursing-0/download.

[6] Massachusetts Senior Care Association 2013 presentation (hard-copy), slide entitled "The Nursing Facility "Dollar" Breakdown of Nursing Home Spending". Presentation in support of S.288, An Act Relative to Stabilizing the Commonwealth's Nursing Facilities, Sen. Hariette Chandler, filed in 2013-14 Fiscal Year.

[7] COVID-19 funding requirements are included in https://www.mass.gov/doc/101-cmr-206-standard-payments-to-nursing-facilities/download.

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