SNFs and HB 33

July 5, 2023

Brief Background

- Nursing Facility Payment Commission summer 2022
- House Bill 45 December 2022
  - $350 million in ARPA funding
  - Intent to rebase direct, ancillary and support, taxes effective 7/1/2023 using 2022 costs
  - Direction to ODM on private rooms, fair rental value
- State of the State address: Governor’s Task Force on Nursing Home Quality and Accountability beginning March 2023

Brief Background

- Industry environment
  - Significant per patient day cost increases > 20% for direct, ancillary and support 2020-2022
  - Workforce challenges persist
  - Census still depressed
  - End of pandemic-related funding
- Budget themes
  - Provider organizations work together
  - Recognized need for funding
  - Focus on quality

House Bill 33 Overview: House of Representatives

- Executive budget: SNFs not addressed at all, except conversion to PDPM
- House budget
  - $715 million per year additional funding
  - Rebase using 2022 costs; median for direct, ancillary and support; taxes; 60% to quality; remove $1.79 deduction
  - Rebase every two years
  - Private rooms - $30 add-on
  - Quality incentive changes
  - PDPM out
  - Occupancy penalty
  - CHOP reform
  - Staffing agency regulation/fee caps
  - Discharge language

House Bill 33 Overview: Senate

- Discussions with Administration (Task Force-related)
- Senate budget
  - $301 million per year additional funding
  - Rebase using 2022 costs; 25th percentile for direct, ancillary and support; taxes; 60% to quality; remove $1.79 reduction
  - Rebase every two years
  - No private rooms
  - Quality incentive changes; funding reduced
  - No occupancy penalty
  - PDPM back in
  - CHOP reform
  - No staffing agency language
  - No discharge language
  - MyCare Ohio expansion

House Bill 33 Overview: Conference

- Conference committee – Administration heavily involved
  - $627/$747 million additional funding
  - Rebase using 2022 costs; direct care at 70th percentile; taxes; 60% to quality; remove $1.79 deduction
  - Rebase every 5 years
  - Private rooms with changes/restrictions
  - More quality incentive changes (staffing measure, exclusions reinstated, recalculate every 6 months); funding restored
  - Occupancy penalty in
  - PDPM out
  - CHOP reform (changed)
  - Vent program restrictions
  - Staffing agency language out
  - MyCare expansion in
  - Licensure CMPs in
  - Discharge language in
  - Funding for surveyors etc. in
- No SNF-related vetoes by Governor

Implementation

- Calculations: direct care prices; value per quality point; 25th percentile cut-off

- ODM rate availability

Rebasing

- 2022 cost reports used – this is a change
- 70th percentile for direct care (no inflation factor)
- Ancillary and support not rebased (also not capital, per HB 110)
- Taxes rebased as usual
- Results in significant price increases
- 60% of funding shifted to quality
- $1.79 deduction from total rate removed
- House/Senate provision for rebasing every two years going forward removed in conference

Quality Incentive: Funding Pool

- 5.2% of base rate – increasing because of higher base rate
- $1.79 per Medicaid day
- $125 million
- 60% of direct care rebasing – a large number
- Total pool divided by “point days” (average points * Medicaid days) = value per point
- No change in pool structure for 7/1/2024

Quality Incentive: Measures for 7/1/2023

- As before
  - Pressure ulcers – 5 points
  - Catheters – 5 points
  - UTIs – 5 points
  - Ability to move – 7.5 points
- Added for 7/1/2023
  - Occupancy – 7.5 points
  - Must be > 75% on previous year's cost report (e.g., 2022)
  - Beds surrendered before July 1 removed from denominator
- 30 points maximum
- Successor metrics because of MDS changes

Quality Incentive: Measures for 7/1/2024

- Added measures
  - Falls with injury – 5 points
  - Antipsychotics – 5 points
  - Activities of daily living decline – 7.5 points
  - Total nursing staff hours – 5 points (PBJ data)
  - Occupancy reduced to 3 points
- 48 points maximum

Quality Incentive: Previous Exclusions Return

- Below 25th percentile of total points – includes occupancy
- Special focus facilities
- All CHOPs (as redefined) – 6-12 month exclusion depending on timing of transaction
- Exception: new facilities now allowed median points

Quality Incentive: 6-Month Recalculation

- Starts 1/1/2024
- Applies to CMS QMs, but not occupancy
- Most likely will be Q3-4 of 2022, Q1-2 of 2023 for 1/1/2024 adjustment
- Value per point not recalculated from July

Private Rooms

- Incentive add-on payment $30 for category 1, $20 for category 2
- CMS approval needed
- Start date is later of 6 months after CMS approval or effective date of ODM rules, but not earlier than 4/1/2024
- Providers must apply for ODM approval
- Must meet private room definition plus cannot be one-star, SFF, or SFF candidate at time of application; ODM can do site visits
- Providers can surrender beds or add/renovate existing space to create private rooms, in addition to new builds

Private Rooms

- Add-on cost capped at $40 million in SFY 2024, $160 million in SFY 2025
- If too many applications to fit within cap, category 1 rooms are prioritized
- Beginning 7/1/2025
  - Policy to prioritize placement in private room based on resident's medical/psychosocial needs
  - Participate in resident/family satisfaction survey

Occupancy Penalty

- In addition to occupancy quality points
- 5% reduction of total rate
- Applies to occupancy < 65%
- Based on previous year’s cost report (2022)
- Beds surrendered before July 1 deducted from denominator
- Exemptions:
  - SNFs opened within previous two calendar years
  - SNFs with renovations > $150,000 with beds out of service for 30 days
  - Specific county home scenario

Case Mix

- MDS changes taking effect 10/1/2023
- Data no longer available to calculate RUGs unless OSA used; alternative is converting to PDPM for direct care
- Executive budget proposed converting to PDPM
- Final budget retains RUGs (via OSA) through 6/30/2025
- Each provider has option to stay with “business as usual” or freeze CMI at 3/31/2023 quarterly level
- Option must be exercised by 10/1/2023 or default to RUGs
- PDPM is coming eventually, but deferred to next budget

Vent Rates

- Vent rates increased for SFY 2024 per ODM fact sheet; HB 33 does not disturb those rates
- HB 33 limits participation in the vent program
- Beginning 7/1/2023, new applicants can’t be one-star, SFF, SFF candidate
- Beginning 1/1/2024, existing vent providers who are one-star, SFFs, or SFF candidates can’t bill vent rate for new vent admissions
- Can bill for new vent patients admitted after disqualifying status lifted
- ODM can waive new admission ban for access reasons

CHOPs

- Redefines CHOP to add:
  - Stock sales, except ESOPs, publicly-traded companies, IPOs
  - Management agreements or other contracts that transfer control over operations and cash flow
  - Changes of ownership that lead to increased lease payments or other financial obligations to owner within one year
  - Certain partnership and LLC changes
- CHOPs must be approved by both ODH and ODM
- Approval process requires extensive information disclosure
- Bond or financial security
  - Must file with ODH unless entering operator is an owner/operator
  - $10,000 per bed
  - Must stay in place for 5 years
  - ODH can use proceeds to address closure, etc.

CHOPs

- All CHOPs lose quality incentive
- Entering operator must have 5 years' experience as administrator, operator, or manager
- Survey within 60 days of CHOP
- Denial of license to entering operator for closures, bankruptcies, receiverships, license actions within the past 5 years
- Notification to ODH of changes within 10 days
- Penalties for submitting false or fraudulent information or failure to notify of CHOP or change in information submitted

Licensure CMPs

- Applies to both SNFs and RCFs
- In addition to certification CMPs for SNFs, but cannot duplicate
- Also allows ODH to require plan of correction
- CMP amounts:
  - No actual harm but potential for more than minimal harm cited more than once within 15 months, not less than $2,000 and not more than $3,000
  - Actual harm, not less than $3,100 and not more than $6,000
  - Real and present danger, not less than $6,100 and not more than $10,000
  - Residents' rights violations, other than retaliation, not less than $1,000 and not more than $5,000 for a first offense, not less than $2,000 and not more than $10,000 for each subsequent offense
  - Retaliation, up to $5,000 for each offense
- Other factors for determining CMPs
- All CMPs appealable under Chapter 119
- ODH can settle, including allowing provider to invest in QI activities

MyCare Ohio Expansion

- Applies to both MyCare and successor program (state's D-SNP proposal for 1/1/2026)
- Expansion to all counties
- ODM required to request CMS approval by 7/1/2024
- ODM can select participating plans
- AAA role language carried over

Miscellaneous

- House provisions regulating staffing agencies and capping fees (HB 466) not included in conference report
- Discharge changes included
  - Emphasize safe and appropriate discharge location, adequate preparation
  - Incorporate federal discharge rights
  - Allow appeal of notice issues
- Funding for more surveyors, other ODH/ODA activities
  - New permissible uses of SNF franchise permit fee revenue
    - Expand state ombudsman long-term care program
    - Expand resident and family surveys
    - Add surveyors
    - Offer quality and consumer information resources
  - ODH: $2.3 million in SFY 2024, $5 million in SFY 2025
  - ODA: $5 million in SFY 2024, $9.3 million in SFY 2025