State Budget Impact on SNFs

July 8, 2021

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State Budget – House Bill 110

- As Introduced – Executive Budget (February 16)
- As Passed by House (April 21)
- As Passed by Senate (June 9)
- As Reported by Committee of Conference, adopted by House and Senate (June 28)
- Signed by Governor and effective (June 30) – some provisions effective in 90 days
- Budget completed on time, unlike 2019

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Pre-Budget Reimbursement Outlook

- Per existing statutes
- Rate rebasing for July 1, 2021, using 2019 cost reports
- “New” quality incentive that began January 1, 2020, to sunset June 30, 2021, leaving only “old” quality incentive

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Executive Budget - “Nursing Home Initiatives: Protecting Ohio's Most Vulnerable”

- Delayed rate rebasing for two years (July 1, 2023)
- Reinstated “new” quality incentive
  - Funded at continuation level plus $50 million per year
  - Removed CHOP and occupancy exclusions, added 33rd percentile exclusion
  - Allowed ODM to change/eliminate quality incentive in second year, added residency and hours requirements
- Bed buy-back program
- Low occupancy program
- Enforcement measures: health orders; SFFs
- Quality improvement/technical assistance programs in Aging

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Budget Changes in House, Senate, Conference

- House restores rebasing, tilts funding heavily to quality and severely restricts qualifying, revises but retains health orders
- Senate tilts funding to rebasing, loosens qualification for quality, eliminates health orders
- Conference compromises between the two: retains rebasing, shifts funding more toward quality, uses House health orders language
- New: funding back-weighted to second year
- Governor's vetoes made no significant changes to SNF provisions (unlike 2019)

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Funding Comparison Table

	Executive	House	Senate	Conference
SNF				
Rebasing	0	100	348	250
Quality-continuation	340	340	340	340
Quality-add	100	217	50	150
Total	440	657	738	740
ID/DD				
ICF	0	0	34	34
Waiver	0	10	127	127
Total	0	10	161	161
HCBS				
AL, PASSPORT, home health, etc.	124	134	171	178

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Rebasing Under HB 110

- Per existing statute, rates were to be rebased July 1, 2021 (five-year schedule)
- HB 110 retains rebasing, but changes it in several ways
- Total amount of rebasing capped at $125 million per year of biennium
- Considerably less than actual amount (estimated $230-260 million per year)
- Impact of projected Medicaid days
- Mechanism for ODM to apply rebasing using four cost centers
  - Capital not rebased, other cost centers ranked (direct, ancillary, taxes)
  - Pro-rata application of funding
- Seventy percent provision
- Capital not to be rebased in future years

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Quality Incentive Under HB 110

- New quality incentive reinstated for July 1, 2021, sunsets June 30, 2023
- Old quality incentive eliminated and funding folded into new incentive (only one set of metrics)
- Continuation funding estimated at $170 million per year
- HB 110 adds $25 million in SFY 2022 and another $100 million in SFY 2023
- Same four metrics (PUs, UTIs, catheters, ability to move) and basic calculation methodology

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Quality Incentive Exclusions

- Below 25th percentile on quality points for CY 2020 (estimated to be below 10 points)
- CHOPs – excluded immediately upon CHOP and until full CY of data under current provider agreement
- New buildings – excluded until full CY of data
- Special Focus Facilities as of May - drafting error vetoed
- Approximately 270-280 buildings in all
- Occupancy criteria waived until July 1, 2023

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Special Rate Provisions Unchanged

- $115 rate for PA1/PA2
- Formula for “high occupancy” bed-hold rates
- Formula for Critical Access Facilities
- Vent rate formula (rates announced):

Description of Service	Specialty Code	Revenue Center Code	Diagnosis Code	Rate 7/1/2021
Vent-dependent – full rate for meeting VAP threshold	**862**	**419**	**Z99.11**	**$924.61**
Vent weaning – full rate for meeting VAP threshold	**867**	**410**	**Z99.11**	**$1,109.53**
Vent-dependent rate – 5% reduction for not meeting VAP threshold	864	419	Z99.11	$878.38
Vent weaning – 5% reduction for not meeting VAP threshold	868	410	Z99.11	$1,054.05

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Setting Rates for July 1, 2021

- HB 110 makes rate changes effective July 1 (no delay)
- ODM announced that rates are not ready, no date given
- Virtually no discussions so far
- Per existing statute, if rates not ready by August 15, Medicaid pays previous rates and settles up when new rates completed
- OHCA cannot reliably estimate rates because of uncertainties about calculation

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July 1 Rates: What We Know

- Basic rate methodology, including application of CMI, unchanged except removal of old quality
- Rebasing
  - 2019 cost reports, existing rate calculation formula by cost center
  - Some sort of allocation of rebasing among cost centers, excluding capital
- Quality incentive
  - Pool defined
  - Points calculated using 4-quarter averages from CY 2020 and existing CMS cut points
  - Bottom percentile defaults to zero
  - OHCA completed calculations unofficially
  - Exclusions unofficially identified (25th percentile, CHOPs, new buildings, SFFs)

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July 1 Rates: What We Don't Know

- How many total Medicaid days ODM will project for SFY 2022
  - Drives estimated total dollar cost of rebasing
  - We estimate $16.35 average per diem increase if rebasing done fully
  - This per diem increase will be reduced by percentage difference between cost of full rebasing and $125 million cap
- Value per quality point
  - Exact amount of quality funding pool (5.2% of base rate + $1.79 deduction + $25 million)
  - How many Medicaid days SNFs had in CY 2020 (cost reports)
- How ODM will allocate $125 million in rebasing funding among cost centers

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Putting It Together the Best We Can

- We estimate value per quality point will be approximately $1.00, perhaps slightly higher
- We estimate rebasing may amount to an $8.00 statewide average increase (actual amount depends on days estimate)
- This amount is approximately half of the total we estimated if rebasing was not capped
- Rebasing will vary among facilities based on:
  - Distribution of rebasing funding among cost centers
  - Peer groups
  - CMI
  - Facility-specific tax costs

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How to Do Your Own Ballpark Rate Estimate

- Start with June 30, 2021, rate
- Remove old quality and new quality payments, along with CAF if applicable
- Remove previous CMI
- Apply new CMI (December-March average)
- Apply quality exclusions as applicable
- If facility qualifies, add new quality points * $1.00
- Add CAF, if applicable, based on CY 2020 cost report
- Add $8.00 to total for rebasing, knowing this estimate may overstate or understate impact on an individual SNF

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Seventy Percent Provision

- New statute mandating how rebasing funds are to be spent
- Seventy percent must be spent on direct care costs, including employee salaries; none may be spent on capital
- ODM has said nothing about how this requirement will be implemented
- Applies to rebasing in SFY 2022 and all subsequent rebasings
- ODM shall (or may) adopt rules
- For SFYs 2022/2023, SNFs must report amounts spent on each cost center quarterly or as determined by ODM on form prescribed by ODM
- ODM may review reports
- SNF shall repay any amounts, plus interest, spent on cost centers other than as permitted

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Rates - Looking Ahead

- In SFY 2023, quality will increase by $100 million ($0.50 or more per point)
- Legislative Nursing Facility Payment Commission
  - To be appointed by December 31, 2021
  - Four members from each of House and Senate (3 R, 1 D)
  - Final report due August 31, 2022
- Commission shall analyze “efficacy” of:
  - Quality incentive payment formula
  - Base rate calculation for quality
  - Cost centers redetermined as part of rebasing
  - Bed buyback program

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Miscellaneous Reimbursement Language Changes

- For a Critical Access Facility's occupancy and utilization rates, "as of the last day of the calendar year" refers to occupancy/utilization during CY, from cost report
- "Inpatient days" means days when a resident occupies a licensed bed (as opposed to a certified bed)
- "Occupancy rate" means percentage of licensed beds either actually being used or receiving bed-hold payments
- References to old quality payment deleted
- Language removed about counting beds taken out of certified capacity for occupancy unless also taken out of licensed capacity (applies to rebasing)
- ODM can adopt rules specifying any resident assessment data excluded from case-mix calculation

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Changing the Subject – Health Orders

- New statute authorizes Director of Health to issue orders and take other actions against SNFs and RCFs (“homes”), effective ca. September 28
- Based on Director’s unilateral determination that “immediate action is necessary to protect resident health or safety because a home has neglected or refused to act with sufficient promptness or efficiency to protect resident health or safety”
- Administration sold this extraordinary power to legislature despite general hostility to health orders based on a few “horror stories”

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Details of Health Orders

- Director may impose penalties without prior hearing:
  - Issue orders (including specifying actions a home must take immediately to address resident health/safety)
  - Take “direct action” to protect health/safety if home fails to comply with order
- Both of the above include:
  - Removing a threat to resident health/safety
  - Transferring residents to another setting
  - Appointing temporary administrator
  - Anything else necessary to protect health/safety
- If a home fails to comply with an order, Director shall impose fine of not more than $100,000 for each instance of noncompliance
- Any expenses incurred by a home to comply with order shall be borne by the home

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Protections

- Any fine shall be reasonably commensurate to harm caused
- Director shall not enter a home under this section without at least 24 hours' advance notice
- Order to transfer residents:
  - If reason is an environmental condition, Director may transfer only residents directly affected by condition
  - If reason is a clinical condition that affects entire home, Director may transfer all residents for lesser of 30 days or until condition resolved

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Appealable Issues (After the Fact)

- Director acted in violation of statute: if appeal succeeds, all reasonable compliance expenses shall be reimbursed to the home
- Reasonableness of a fine
- Director's determination that a condition leading to transfer of all residents persists for longer than thirty calendar days

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Expedited Appeals

- Appeal request must be received by Director 15 days after notice of order mailed
- Hearing must be held within 10 days after request
- Director must issue adjudication order not later than 30 days after completion of hearing
- Order remains in effect during appeal, unless reversed by Director, until adjudication order issued

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CON: Frequently-Asked Questions

- Is the moratorium in the last budget bill that prevented in-county bed relocations, additions, and renovations in most Ohio counties still in effect?
- No, the moratorium was limited to the biennium that ended June 30, 2021, and it was not renewed in HB 110
- In-county relocations, additions, and renovations once again subject to rules in effect before moratorium
- Contiguous county relocations still permitted under existing rules
- New bed-need determinations will not be made until 2023 and implemented in 2024
- HB 110 change: renovation threshold raised from $2 million to $4 million (less exempt costs)

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Special Focus Facilities

- 2013 Ohio statute allowed ODM to terminate SFF's Medicaid provider agreement if facility did not improve for 12 months, instead of federal 24 months
- Statute ruled unconstitutional in late 2020
- HB 110 amends statute to "fix" issues challenged in court (proposal from Administration)

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Expedited Licensure Surveys

- Statute change
- Expedited survey available for new home, increase/decrease of licensed capacity, any other change for which ODH requires licensing inspection
- Language about plan reviews removed

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