

Ohio's Budget Includes Several Changes for Long-Term Care Providers

JULY 21, 2009

Authors: [Alan E. Schabes](#), [Martha J. Sweterlitsch](#)

Governor Strickland approved Ohio's much-debated budget for the 2010-2011 biennium on Friday, July 17, 2009. The budget (Am. Sub. H. B. No. 1) includes several provisions affecting long-term care providers, which range from changes in Medicaid funding and bed tax rates to changes in Ohio's certificate of need ("CON") laws.

Changes to CON Laws

For the first time, the CON laws permit the relocation of beds across county lines. The amended statutes permit the Director of the Ohio Department of Health ("ODH") to approve CON applications that propose to relocate beds from a county with excess beds to a county in which there are fewer long-term care beds than that county's need. In order to implement this change, the Director of ODH is instructed to determine each county's bed need, which is defined as the number of beds that would be needed in order to establish a 90% occupancy rate for the projected population aged 65 and older. The Director may only approve a transfer of beds across county lines if the number of beds remaining in the county from which the beds are being transferred will exceed the county's bed need by at least 100 beds. In addition, the Director may only approve such a transfer if the number of beds in the transferring facility's service area (defined as the 15-mile radius surrounding the facility, irrespective of county lines) is at least equal to the state's bed need rate.

The Director's first determination of each county's bed need must be made before April 1, 2010. The Director must make a second determination before April 1, 2012. Thereafter, the Director must assess each county's bed need every four years. Even if a county is determined not to need additional beds, the Director may approve an increase in beds in that county up to 10% of the county's bed supply, provided that the county's occupancy rate is greater than 90%. Upon a transfer of beds to another county, the transferring facility will be required to reduce the number of beds it operates by at least 10% of the number of beds relocated and surrender the license or certification of those beds.

The revised CON laws also require the Director of ODH to accept CON applications that propose to increase the number of nursing home beds in an existing nursing home by no more than 30 beds provided that the proposed increase is the result of a transfer of the beds from a contiguous county and, after the proposed transfer, some nursing home beds will remain in the county from which the beds are transferred.

The CON laws have also been revised to include additional bases upon which the director must deny CON applications. The director must deny a CON application if, during the applicant facility's three most recent surveys, the facility was cited for three or more H or I-level deficiencies or two or more K or L-level deficiencies. In addition, if more than two Ohio nursing homes operated by the applicant or the operator of the applicant facility were each cited for three or more H or I-level deficiencies or two or more K or L-level deficiencies during the three most recent surveys, the director must deny the CON application. If the applicant or operator of the applicant facility operates more than 20 nursing homes in Ohio, a CON application will be denied if more than 10% of the nursing homes it operates in Ohio were each cited for three or more H or I-level deficiencies or two or more K or L-level deficiencies during the three most recent surveys.

SNF Consolidated Services

The budget adds to a nursing facility's direct care costs reimbursable by Medicaid several services for which many outside providers may have previously billed Medicaid. For example, the costs of oxygen, rather than just emergency oxygen, over-the-counter pharmacy products, and costs associated with physical, occupational, and speech therapy as well as audiology are now all reimbursable as part of a nursing facility's direct care costs. Costs associated with wheelchairs and resident transportation are also now included as part of a nursing facility's ancillary and support costs.

The revised statutes provide that nursing facilities must provide the above-mentioned services directly to Medicaid residents as part of the nursing facility's services and, in return, nursing facilities will receive a consolidated services rate in the amount of \$3.91 per day added to their Medicaid reimbursement rate. Therefore, nursing facilities will have to restructure any relationships they currently have with suppliers of such services that provide the services to Medicaid residents and bill Medicaid directly.

SNF Medicaid Reimbursement

In addition to adding the consolidated services rate to nursing facilities' Medicaid reimbursement rate, the budget adds a \$5.70 workforce development incentive payment to the reimbursement rate for fiscal years 2010 and 2011.

The budget also applies a stop loss of 1% in 2010 for nursing facilities whose June 30, 2009 Medicaid rates are higher than the rate applicable under the revised statutes. A 1.75% stop gain is applied to nursing facilities whose June 30, 2009 Medicaid rates are lower than the applicable 2010 rate. In 2011, the stop loss remains at 1% and the stop gain is raised to 2.25%. The stop loss and stop gain adjustments are applied before the workforce development incentive payment and the consolidated services rate adjustments are made.

Finally, the budget sets the Medicaid reimbursement rate paid to nursing facilities for the franchise permit fee at \$6.25 per resident per day. Under the current law, this amount is equal to the amount of the franchise permit fee per resident per day.

Ohio Department of Job and Family Services (“ODJFS”) must determine nursing facilities’ reimbursement rates no later than October 1, 2009 and pay those rates retroactively to July 1, 2009.

SNF Franchise Permit Fee

The budget creates a formula for determining the franchise permit fee, commonly referred to as the “bed tax.” This formula is based, in part, on 5.5% of net patient revenues of nursing homes and hospital long-term care units and a base rate of \$11.95 (as opposed to the current rate of \$6.25). ODJFS must determine the amount of the bed tax no later than the 15th day of September and require providers to pay the first installment of the bed tax no later than 45 days after the last day of October. Currently, the bed tax rate is determined in August and providers must pay the first installment no later than 45 days after the last day of September.

The budget also contains a provision that requires ODJFS to recalculate the bed tax rate if the amount assessed by the fee exceeds 5.5% of the actual net patient revenue for all nursing homes and hospital long-term care units for that fiscal year. In that event, ODJFS will credit the amount of fees owed by nursing homes and hospitals for the following fiscal year.

Sales of Nursing Facilities

The budget also contains changes to the sales process of nursing facilities. The budget eliminates the requirement that a nursing facility refund to ODJFS the amount of excess depreciation paid to the facility under Medicaid if the facility is sold. This recapture has often served as an impediment to nursing facility transactions.

Additional Information

For additional information, please contact:

Harry M. Brown at (216) 363-4606 or hbrown@beneschlaw.com

Janet K. Feldkamp at (614) 223-9328 or jfeldkamp@beneschlaw.com

Beth Rosenbaum at (216) 363-4519 or brosenbaum@beneschlaw.com

Alan E. Schabes at (216) 363-4589 or aschabes@beneschlaw.com

Martha J. Sweterlitsch at (614) 223-5367 or msweterlitsch@beneschlaw.com