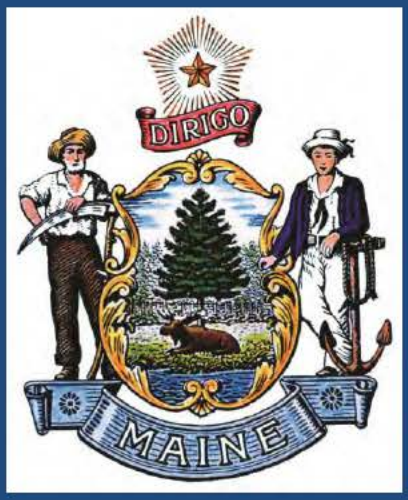

2018-2019

Sustainable Funding Review of Assisted Living Facilities

Chapter 460, Public Law (LD 925) Part H

State of Maine Department of Health and Human Services
Office of Aging and Disability Services

Sustainable Funding Review of Assisted Living Facilities
Chapter 460, Public Law (LD 925) Part H

Executive Summary

Current Assisted Living Facility Providers				
Site	**Location**	**Number of Residents[1]**	**Number of Consumers[2]**	**Service Provider**
Inn at City Hall	Augusta	29	26	MaineGeneral
Freeses	Bangor	37	37	Penquis CAP Inc.
Merry Garden Estates	Camden	26	22	Penquis CAP Inc.
Stearns	Millinocket	19	15	Penquis CAP Inc.
Iris Apartments	Portland	18	16	The Iris Network
Mayflower Place	Sanford	34	29	SMHC, Inc.
Wardwell	Saco	30	7	Wardwell Assisted Living, Inc.
TOTAL		**193**	**152**	

Effective July 9, 2018 Public Law 2018, Chapter 460, Part H ("An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government") authorized additional one-time funding for Affordable Assisted Living Facilities (ALFs) and directed the Department of Health and Human Services (the Department) to review possible ways to provide adequate sustainable funding for the ALFs.

The Department designated the Office of Aging and Disability Services (OADS) to perform the review. Pursuant to PL 2018, Ch. 460, Part H, OADS staff reviewed possible ways to provide adequate funding for affordable assisting living facilities that hold a valid contract with OADS, including:

a) providing permanent increases to existing funding levels;
b) paying the medical costs of certain residents until they are eligible for MaineCare coverage (a practice known as Rate Code 53 spending); and
c) designating facilities as MaineCare reimbursable Private Non-Medical Institutions (PNMIs).

The review included OADS, the Office of Family Independence, the Office of MaineCare Services, and all current ALF providers.

The review identified the following options:

1. The program could continue in its current configuration with additional funding. Specifically, for consumers receiving Section 63 In-Home and Community Support Services for Elderly and Other Adults state funded services, increasing the number of reimbursable medication passes from three to six

[1] **Resident**: for purposes of this report, a resident is defined as person who lives in the ALF property permanently or on a long-term basis, but does not receive ALF services

[2] **Consumer:** a consumer is defined as any person eighteen years of age or older, who is not related by blood or marriage to the owner or person in charge of the assisted living program or building in which the consumer lives, and who receives assisted housing services as defined in Regulations Governing the Licensing and Functioning of Assisted Housing Programs: (10-144) Chapter 113 Assisted Living Programs Section 2.12

per day[3], and providing an additional state funded 20% cost increase for all providers (based on the initial contract amounts). An additional $750,000 would be necessary to sustain the above-mentioned changes and the program overall.

2. The program could be discontinued in its current configuration; in which case, all individuals would be assessed for comparable services that would be contracted out to qualified providers. Since ALF services are currently bundled, services would be awarded to different/multiple contractors or providers. If necessary, consumers would be transitioned to different living facilities.

Background

History

The ALFs were initiated in the 1990's with private foundation grants, and state and federal funds. The seven ALFs are the outgrowth of a 2001 Robert Wood Johnson Foundation grant to develop statewide affordable assisted living services for elders and people with disabilities. The primary purpose of these facilities is to provide elders with affordable assisted living, and provide the necessary support services to delay or alleviate the need for nursing facility level of care, and allow more people to age in place.

1. The ALF service model has two parts: housing and services. Housing is paid by the resident directly to the property owner in the form of rent. For all consumers, services such as meals, and emergency response are paid with state funded contracts between OADS and the service providers. Personal care, medication administration, and homemaker services are paid with state funds or MaineCare funds dependent on eligibility. A resident's eligibility for services is determined by an assessment through the Departments authorized independent assessing services agency (ASA). A resident of an ALF may require all or some of the available services. The service provider can only bill for the services authorized by the ASA. As applicable, consumers are charged a MaineCare co-pay based on MaineCare Benefits Manual, Chapters II & III, Section 96 Private Duty Nursing and Personal Care Services, Level IX [4] or an applicable cost share based on the co-pay calculation in Section 63.11, In-Home and Community Support Services for Elderly and Other Adults[5], by the service provider. The service provider uses the "approved form to determine the client's income and liquid assets and calculate(s) the monthly payment to be made by the consumer."[6]

Housing

The current ALFs were all developed with Low Income Tax Credit Financing. At that time, the facility owners were responsible for developing the property, finding tenants for the property, and hiring an agency to provide services. These facilities were piloted in Maine through a unique partnership between MaineHousing and the Department. The ALFs were developed on the premise that the residents would have their own apartment with the option of having services provided. There are seven sites located throughout the state.

[3]Department of Health and Human Services, Office of Elder Services Policy Manual, Section 63.04 (E)(2)(h) In-Home and Community Support Services for Elderly and Other Adults

[4] Department of Health and Human Services, MaineCare Benefits Manual, Section 96, Private Duty Nursing, 96.9

[5] Department of Health and Human Services, Office of Elder Services Policy Manual, Section 63, In-Home and Community Support Services for Elderly and Other Adults, CONSUMER PAYMENTS 63.11

[6] Ibid. Sections 63.11, 63.12

Approximately half of residents eligible for the ALF program receive some form of Housing and Urban Development (HUD) rental assistance: either a Section 8 Housing Choice Voucher[7] or a Project Based Voucher[8]. The vouchers are managed either by the local Public Housing Authority (PHA) or by MaineHousing. The ALFs are licensed by the Department's Division of Licensing and Certification[9], and they receive funding to provide services through contracts with OADS.

Services

This service was previously Medicaid funded, via Section 6, Assisted Living Services of the MaineCare Benefits Manual. However, that service was discontinued and the policy repealed in July 2009. Since that time the seven ALFs have been funded with state funds, as opposed to a mix of state and federal funds. The state funds are authorized to pay for the consumers' services (such as meals) that are not covered by either Medicare or Medicaid/MaineCare. The program is current annually funded with state general funds which are allocated among the seven ALFs and administered through contracts with OADS. The ALF program has been flat funded since 2012. In January of 2013, the ALF program was subjected to a statewide funding curtailment of 10%.[10] The funding reduction from the curtailment was never reinstated in subsequent fiscal years, which led to the service providers expressing concern about the sustainability of the program.

ALFs are required to provide the following services in accordance with the Regulations Governing the Licensing and Functioning of Assisted Housing Programs: (10-144) Chapter 113:

- Service coordination to identify a consumer's need and desire for services and to coordinate the appropriate types and amounts of services, as identified in the consumer's service plan. Service coordination includes:
    - Completing the functional assessment and reassessments;
    - Coordinating and participating in a health professional's assessment or reassessment as necessary;
    - Reviewing, with the consumer, the findings of the functional assessments, the options available to address the consumer's needs and the development of a service plan;
    - Implementation of a service plan;
    - Monitoring of the consumer's needs and services furnished, as often as necessary;
- Housekeeping services to assist consumers with IADLs
- Assistance with ADLs;
- At least one nutritious meal a day;
- Chore services to assist with heavy cleaning

In addition, rule changes were made to allow medication administration within existing programs:

- HBC V (Home Based Care (HBC), Section 63[11] of the Office of Aging and Disability Services Policy Manual)
- PDN IX (Private Duty Nursing (PDN) Section 96[12] of the MaineCare Benefits Manual).

Current State Analysis

The OADS team met with all ALF providers on July 25th, August 22nd and September 19th. The meetings were used as a forum to discuss the Department's review process, the providers' role, and to solicit input for potential

[7] Housing Choice Vouchers Fact Sheet; https://www.hud.gov/topics/housing_choice_voucher_program_section_8
[8]Project Based Vouchers; https://www hud.gov/program_offices/public_indian_housing/programs/hcv/project
[9] Regulations Governing the Licensing and Functioning of Assisted Housing Programs: (10-144) Chapter 113
[10] Executive Order 2012-007, An Order Curtailing Allotments Pursuant to 5 MRSA Section 1668 (December 2012)
[11] Department of Health and Human Services, Office of Elder Services Policy Manual, Section 63, In-Home and Community Support Services for Elderly and Other Adults, ELIGIBILITY 63.02(B)(5)
[12] Department of Health and Human Services, MaineCare Benefits Manual, Section 96, Private Duty Nursing, 96.02-4(I)

solutions. In addition, throughout the month of July, the OADS team engaged in individual site visits which also provided an opportunity to collaborate on possible sustainable solutions.

The OADS team performed the following tasks:

- Administrative preparation:
  - Reviewed MaineCare and the Assessing Services Agency processes
  - Clarified Private Duty Nursing and Home-Based Care contract billing
  - Reviewed licensure rules: Regulations Governing the Licensing and Functioning of Assisted Housing Programs: (10-144) Chapter 113
  - Reviewed ALF housing criteria (admission/discharge and tenancy and lease obligations)
  - Met with the Office of Family Independence (OFI) to discuss Rate Code 53 spending
  - Met with Office of MaineCare Services (OMS), rate-setting staff to discuss the Private Non-Medical Institution (PNMI) rate structure

- Site visits:
  - Data collection from the ALF providers:
    - Admission process
    - Attrition/length of stay
    - Consumers by program
    - Co-pay and cost share information
    - Staffing information
  - On-site review:
    - Admission packet/contract
    - Staff interviews
    - Consumer interviews
    - Review all Plans of Care
    - Review daily documentation

Permanent Rate Increases

OADS' review of consumer documentation identified the gaps between authorized services and member needs, specifically related to medication administration. The state contracts do not pay for all services provided by the ALFs, specifically medication passes beyond the allowed three per day.[13]

Many consumers are scheduled for more than the three reimbursable medication passes[14] per day as allowable in Section 63.04 (E)(2)(h) In-Home and Community Support Services for Elderly and Other Adults.
For most consumers, any non-scheduled medication need (e.g., Tylenol, hydrocortisone cream, cough syrup, etc.) results in service provision beyond OADS HBC V allowances. In addition, many consumers do require assistance with medications on an as-needed basis, ALF providers must have qualified staff available to administer medications "whenever a resident(s) have medications prescribed "as needed" (PRN) if this medication is not self-administered."[15] Staff also spend approximately nine hours each day following up on consumer care needs.

[13] Department of Health and Human Services, Office of Elder Services Policy Manual, Section 63.04 (E)(2)(h) In-Home and Community Support Services for Elderly and Other Adults
[14] Ibid.
[15] Regulations Governing the Licensing and Functioning of Assisted Housing Programs: (10-144) Chapter 113, Medication and Treatment Section 7.2.3

These tasks, as described above, are required by the Division of Licensing and Certification, but are not directly reimbursable. These tasks include, for example, clarifying medication orders and other administrative duties.[16]

Rate Code 53 Review

In 2001, Rate Code 53 was created by legislation.[17] Rate Code 53 is a process the Department uses to track costs for federal Medicaid participation. Rate Code 53 is defined as, "Medically Needy Individuals in a Spend-Down Category: These are individuals who reside in certain Private Non-Medical Institutions who do not have enough monthly income to pay the private rate of the facility. These individuals have assets less than $2,000 and income over 100% FPL, making them ineligible for MaineCare. They reside in Residential Care Facilities defined in the MaineCare Benefits Manual[18]. The Department uses all state dollars to fund their medical costs until they meet their deductible and become eligible for MaineCare. The deductible is a six-month deductible and must be met twice a year. This state spending is known as Rate Code 53 spending."

The Rate Code 53 deductibles for 68 of the 117 consumers who were not MaineCare eligible were calculated through this analysis. The sample size was 58% of the available consumers. Of those 68 consumers, only 12 consumers would meet the deductible threshold. Due to this low rate of applicability, Rate Code 53 is not recommended as a solution to ensure the sustainability of this program.

PNMI Review

A PNMI is defined by MaineCare as "…an agency or facility that is not, as a matter of regular business, a health insuring organization, hospital, nursing home, or a community health care center, that provides food, shelter, personal care, and treatment services to four or more residents in single or multiple facilities or scattered site facilities"[19] PNMI facilities must be licensed[20] by the Department. These facilities provide residents with medical and remedial treatment services and also receive cost reimbursement for room and board costs. PNMI services include rehabilitative and personal care services as defined by Section 97.04 of the MaineCare Benefits Manual.[21]

The average daily MaineCare rate for PNMIs is currently $109.06. As referenced previously, residents of PNMIs may qualify for MaineCare coverage by meeting income and assets criteria, or through the application of Rate Code 53. Rate Code 53 expands coverage to asset eligible residents whose income exceeds MaineCare criteria but is less than the cost of PNMI services. PNMI residents pay a monthly cost of care to the provider and can only keep $70 per month for personal use.[22]

The primary barrier to utilizing the existing PNMI benefit to help sustain this service is the housing itself. All consumers receiving services within the ALF program have a separate lease with the property owner, therefore, rent and related costs (i.e. utilities) would not be available as revenue to the PNMI provider, who would normally collect room and board from the consumer. The current ALF configuration separates housing and personal care

[16] Ibid., Section 7.2; 7.12
[17] Title 22 MRSA HEALTH AND WELFARE: INCOME SUPPLEMENTATION Chapter 855: AID TO NEEDY PERSONS §3174-A. Medical coverage program for certain boarding home residents.
[18] Department of Health and Human Services, MaineCare Benefits Manual, Section 97.01-9, DEFINITIONS, Private Non-Medical Institution Services
[19] Ibid.
[20] Regulations Governing the Licensing and Functioning of Assisted Housing Programs: (10-144) Chapter 113 Level IV Private Non-Medical Institutions Section 3 Licensing 3.2
[21] Department of Health and Human Services, MaineCare Benefits Manual, Section 97.04, COVERED SERVICES- DIRECT CARE STAFF, Private Non-Medical Institution Services
[22] Department of Health and Human Services, MaineCare Eligibility Manual, Part 12: Residential Care Section 4.3.1 II(B)(3): Determining the Cost of Care for an Individual

providers. In addition, the property owners have both covenants and agreements with HUD and MaineHousing, which prevent the properties from converting to a medical model such as PNMIs.

As stated above, consumers living in a PNMI that are eligible for financial assistance are responsible for a monthly cost of care that leaves them with an allowance of $70 per month for personal needs. When interviewed, consumers reported their preference in maintaining their own apartments and having the increased independence and choice that the ALF program provides.

Findings

Licensing

- All the ALFs are required to be licensed to provide medication administration.
- Licensing rules require specific staffing standards (Certified Residential Medication Aide (CRMA), Personal Support Specialist (PSS) in order to provide services.
- ALF providers must have qualified staff available to administer medications "whenever a resident(s) have medications prescribed "as needed" (PRN) if this medication is not self-administered."[23]

Rate Code 53

- OFI calculates Rate Code 53 deductibles only for consumers living in a PNMI.
- Many of the consumers living in the ALFs do not have a current cost of care higher than the Rate Code 53 deductible, therefore, would not qualify.
- Rate Code 53 deductibles would apply to only a small number of individuals living in any of the ALF properties for the reasons listed above.

PNMI

- ALF's HUD covenants prevent sites from becoming an institutional/medical model such as PNMI.
- Residents ineligible for Rate Code 53/MaineCare typically cannot afford to privately pay for both housing and services.
- If the ALF's became a PNMI provider, they would not be able to collect a room and board cost.
- Designation as a PNMI would involve changes in MaineCare and Licensing rules, as well as, changes to the process currently used for setting rates.
- Designation as a PNMI would require higher staffing ratios.[24]
- Designation as a PNMI could result in decreased consumer choice and independence.

For consumers who otherwise qualify for PNMI placement, the ALFs provide an alternative that allows them to maintain their independence with limited services. If the ALFs could convert to a different model (i.e. if they were to possibly convert to PNMIs), this would change the services provided. Additionally, facility costs would increase due to changes in required staffing ratios and services.

Non-reimbursed medication passes are the most substantial financial issue identified by the ALF providers. In accordance with Section 63, In-Home and Community Support Services for Elderly and Other Adults [25]the

[23] Regulations Governing the Licensing and Functioning of Assisted Housing Programs: (10-144) Chapter 113, Medication and Treatment Section 7.2.3

[24] Regulations Governing the Licensing and Functioning of Assisted Housing Programs: (10-144) Chapter 113 Level IV Private Non-Medical Institutions Section 13 Staffing 13.2-13.4

[25]Department of Health and Human Services, Office of Elder Services Policy Manual, Section 63.04 (E)(2)(h) In-Home and Community Support Services for Elderly and Other Adults

provider is only reimbursed for three medication passes per consumer per day, for a total of 21 per week. However, research indicated that many consumers require significantly more than three a day. In accordance with licensing staffing requirements which state, "A person qualified to administer medications must be on site at the assisted living program whenever a resident(s) have medications prescribed "as needed" (PRN) if this medication is not self-administered" [26], the provider is obligated to provide the additional service, regardless of whether they are reimbursed. For example, in June of 2018, there were a total of 12,197 medication passes in all seven sites. The ALF providers only receive reimbursement for 8,954, leaving 3,243 medication passes unreimbursed.

Inflation of routine costs without an accompanying increase in funding has also impacted sustainability of the program. According to the US Department of Agriculture, food costs[27] have increased more than 10% since the program's inception in 2002. Labor and associated expenses continue to rise, with minimum wage increasing 33% in the same time, and an additional scheduled increase of 20% by 2020.[28]

Recommendations

The findings of this study indicate that the following actions would have to take place to continue this service in its current configuration:

- Increase the number of reimbursable medication passes would have to be increased from three to six, and
- Provide an overall 20% rate increase (based on the initial contract amounts). of approximately $750,000 annually, which is significantly less than the current MaineCare PNMI rate.

As described in the Executive Summary, the second option would be for the ALF program to end in its current configuration. The providers would no longer provide the services in the facilities. All consumers would be re-assessed for comparable services that may be contracted out. However, any consumers that need medication administration (75% of all current consumers) would need to transition to other, potentially costlier, residential facilities.

Finally, OADS recommends that all ALF providers complete a periodic review of state funding formulas and funding levels. The ALF providers could submit a report containing their findings, recommendations, and plan, including suggested legislation back to the joint standing committee having jurisdiction over Health and Human Services matters.

[26] Regulations Governing the Licensing and Functioning of Assisted Housing Programs: (10-144) Chapter 113 Assisted Living Programs Section 12 Services and Service Coordination 12.1

[27] Official USDA Food Plans: Cost of Food at Home at Four Levels, U.S. Average, July 2009, August 2018

[28] Titles 26 LABOR AND INDUSTRY: Chapter 7: EMPLOYMENT PRACTICES §664. Minimum wage; overtime rate